PART IV
RULES FOR SUPERIOR COURT

SUPERIOR COURT ADMINISTRATIVE RULES (AR)

TABLE OF RULES

AR RULE 1
REPORTING OF CRIMINAL CASES

(a) Report of Disposition. Within five court days after disposition by the superior court of a criminal charge, whether the disposition be a plea of guilty or by deferral or suspension of imposition of sentence, or a finding of guilty, or not guilty after trial, or by dismissal of the charge, the court clerk shall report such disposition to the Washington State Patrol Section on Identification on a disposition form approved by the Administrator for the Courts. When a sentence has been deferred or suspended, the report to the Section shall indicate the length of time over which such suspension or deferral is to be effective. At the conclusion of the time period for deferral or suspension of sentence, the court clerk shall forward an amended disposition form to the Section showing the actual disposition of the case.

(b) Report of Appeal. If an appeal is taken from the disposition made by the superior court, the court clerk shall, within five court days of the taking of the appeal, notify the Section on an amended disposition form. In the event that the result of any proceeding changes or otherwise makes inaccurate the information forwarded on the original disposition report, the court clerk shall prepare and forward to the Section a supplemental disposition report on a form approved by the Administrator for the Courts indicating thereon the information necessary to correct the current status of the disposition of charges against the subject maintained in the records of the Section.

[Adopted effective March 1, 1974.]

RULE 2
CASE INFORMATION COVER SHEET

Each new civil and domestic case filing shall be accompanied by a Case Information Cover Sheet prepared and submitted by the plaintiff. The minimum requirements of this Case Information Cover Sheet shall be established by the Court Management Council in coordination with the Office of the Administrator for the Courts. Any additional case flow information deemed necessary for the management of cases by a court must be approved by the Office of the Administrator for the Courts.

RULE 3
ONE DEFENDANT PER CASE

For criminal cases involving more than one defendant on a single charging document, a duplicate original of the charging document will be filed for each defendant. Each defendant will receive a unique cause

number. All subsequent pleadings related to this defendant for this cause shall be placed in the defendant's case file to assure that the defendant's file represents a complete legal record.

The assignment of a separate cause number to each defendant of those named on a single charging document is not considered a severance. Should a defendant desire that the case be severed, the defendant must move for severance.

RULE 4
PRESIDING JUDGE, MORE THAN ONE JUDGE IN SUPERIOR COURT DISTRICT

[REPEALED]

[Adopted effective December 28, 1990;
Repealed effective April 30, 2002.]

RULE 5
OFFENDER FINANCIAL INFORMATION

For purposes of monitoring and billing legal financial obligations, information contained in the criminal judgment and docket records of the superior court clerk shall be considered official. The clerk shall provide such information to the Department of Corrections to promote timely satisfaction of offender financial obligations.

Superior Court Administrative Rule 6
ELECTED JUDGES PRO TEMPORE

(a) Generally. Wa. const. art. IV, § 7 and RCW 2.08.180 authorize the appointment of judges pro tempore. RCW 2.08.180(2) provides for the appointment of any elected sitting judge as an elected judge pro tempore.

(b) Assignment and Qualifications. The presiding judge of any superior court may, in the interest of justice, assign an elected sitting judge from the Supreme Court, Court of Appeals, District or Municipal Court to serve as an elected judge pro tempore. The presiding judge will obtain the consent of an elected judge pro tempore before making the assignment. Consent of the parties or attorneys is not required. The presiding judge will make these assignments based on the experience and demonstrated ability of the elected judge pro tempore with the subject matter and the level of complexity of the case.

(c) Number and Publication of Judges Pro Tempore. Each superior court shall file with the Administrative Office of the Courts (AOC) by February 1st the list of elected judges pro tempore to which it shall be assigning cases during the year commencing on April 1st. Each court may appoint a minimum of three (3) elected judges pro tempore or one (1) elected judge pro tempore for every five (5) sitting judges but in no event may the list contain more than fifteen (15) elected judges pro tempore. The list shall identify the court on which the elected judge pro tempore serves and the number of years of judicial service. The list shall be disseminated in the same manner as required for local court rules by GR 7 and also be published on the AOC website.

(d) Date of Filing of Action Controls Assignment of Elected Judges Pro Tempore. The list of elected judges pro tempore which is on file on the date of the filing of an action is the list from which an elected judge pro tempore shall be appointed by the presiding judge to hear matters for the duration of that case.

(e) Substitute Judge Pro Tempore. In the event an elected judge pro tempore appointed in accordance with

section (c) becomes unable to serve as an elected judge pro tempore, a new elected judge pro tempore may be substituted on the list for the elected judge pro tempore who is unavailable. The appointment of a substitute elected judge pro tempore is not required to comply with the time periods set forth in section (c) but shall comply with identification and dissemination requirements set forth in that section. The provisions of section (b) and (d) shall apply to the appointment o a substitute elected judge pro tempore. For courts having three (3) elected judges pro tempore, one elected pro tempore judge may be substituted annually and in all other courts no more than two (2) elected judges pro tempore may be substituted annually.

(f) Notice of Change of Elected Judge Pro Tempore. In addition to RCW 4.12.050, any party to or any attorney appearing in any case which is assigned to an elected judge pro tempore shall be entitled to one (1) notice of change of judge when that judge has been assigned a matter over which to preside. Counsel shall file any "Notice of Change of Judge" before the noticed judge has made any discretionary ruling in the case, either on the motion of the party filing the notice of change of judge or on the motion of any other party to the action. The notice of change of judge shall be filed with the clerk of the court and copies served on all parties, the presiding judge, the court administrator and the noticed judge. Upon the filing of a notice of change of judge, the case shall be transferred to the presiding judge for reassignment and the noticed judge shall thereafter be ineligible to preside over any matters in that case.

[Adopted effective December 26, 2001; amended effective January 3, 2006.]

Comment

For attorney judges pro tempore, see RCW 2.08.180(1).
For visiting judges, see RCW 2.08.140 and 150.

SUPERIOR COURT CIVIL RULES (CR)

TABLE OF RULES

1. INTRODUCTORY

2. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

3. PLEADINGS AND MOTIONS

4. PARTIES

RULE CR 1
SCOPE OF RULES

These rules govern the procedure in the superior court in all suits of a civil nature whether cognizable as cases at law or in equity with the exceptions stated in rule 81. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

[Adopted effective July 1, 1967; amended effective September 1, 2005.]

RULE 2
ONE FORM OF ACTION

There shall be one form of action to be known as "civil action."

RULE 2A
STIPULATIONS

No agreement or consent between parties or attorneys in respect to the proceedings in a cause, the purport of which is disputed, will be regarded by the court unless the same shall have been made and assented to in open court on the record, or entered in the minutes, or unless the evidence thereof shall be in writing and subscribed by the attorneys denying the same.

RULE 3
COMMENCEMENT OF ACTION

(a) Methods. Except as provided in rule 4.1, a civil action is commenced by service of a copy of a summons together with a copy of a complaint, as provided in rule 4 or by filing a complaint. Upon written demand by any other party, the plaintiff instituting the action shall pay the filing fee and file the summons and complaint within 14 days after service of the demand or the service shall be void. An action shall not be deemed commenced for the purpose of tolling any statute of limitations except as provided in RCW 4.16.170.
(b) Tolling Statute. (Reserved. See RCW 4.16.170.)
(c) Obtaining Jurisdiction. (Reserved. See RCW 4.28.020.)
(d) Lis Pendens. (Reserved. See RCW 4.28.320 and 4.28.160.)

RULE 4
PROCESS

(a) Summons--Issuance.
(1) The summons must be signed and dated by the plaintiff or his attorney, and directed to the defendant requiring him to defend the action and to serve a copy of his appearance or defense on the person whose name is signed on the summons.
(2) Unless a statute or rule provides for a different time requirement, the summons shall require the defendant to serve a copy of his defense within 20 days after the service of summons, exclusive of the day of service. If a statute or rule other than this rule provides for a different time to serve a defense, that time shall be stated in the summons.
(3) A notice of appearance, if made, shall be in writing, shall be signed by the defendant or his attorney, and shall be served upon the person whose name is signed on the summons. In condemnation cases a notice of appearance only shall be served on the person whose name is signed on the petition.

(4) No summons is necessary for a counterclaim or cross claim for any person who previously has been made a party. Counterclaims and cross claims against an existing party may be served as provided in rule 5.

(b) Summons.

(1) Contents. The summons for personal service shall contain:

(i) the title of the cause, specifying the name of the court in which the action is brought, the name of the county designated by the plaintiff as the place of trial, and the names of the parties to the action, plaintiff and defendant;

(ii) a direction to the defendant summoning him to serve a copy of his defense within a time stated in the summons;

(iii) a notice that, in case of failure so to do, judgment will be rendered against him by default. It shall be signed and dated by the plaintiff, or his attorney, with the addition of his post office address, at which the papers in the action may be served on him by mail.

(2) Form. Except in condemnation cases, and except as provided in rule 4.1, the summons for personal service in the state shall be substantially in the following form:

SUPERIOR COURT OF WASHINGTON
FOR (_____) COUNTY

_____,	)	
Plaintiff,	)	No. _____
v.	)	
_____,	)	SUMMONS (20 days)
Defendant.	)	

TO THE DEFENDANT: A lawsuit has been started against you in the above entitled court by _____, plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and by serving a copy upon the person signing this summons within 20 days after the service of this summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where plaintiff is entitled to what he asks for because you have not responded. If you serve a notice of appearance on the undersigned person, you are entitled to notice before a default judgment may be entered.

You may demand that the plaintiff file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon the person signing this summons. Within 14 days after you serve the demand, the plaintiff must file this lawsuit with the court, or the service on you of this summons and complaint will be void.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

This summons is issued pursuant to rule 4 of the Superior Court Civil Rules of the State of Washington.

(signed)_____
_____
Print or Type Name
( ) Plaintiff ( ) Plaintiff's Attorney
P. O. Address _____
Dated _____ Telephone Number _____

(c) By Whom Served. Service of summons and process, except when service is by publication, shall be by the sheriff of the county wherein the service is made, or by his deputy, or by any person over 18 years of age who is competent to be a witness in the action, other than a party. Subpoenas may be served as provided in rule 45.

(d) Service.

(1) Of Summons and Complaint. The summons and complaint shall be served together.

(2) Personal in State. Personal service of summons and other process shall be as provided in RCW 4.28.080-.090, 23B.05.040, 23B.15.100, 46.64.040, and 48.05.200 and .210, and other statutes which provide for personal service.

(3) By Publication. Service of summons and other process by publication shall be as provided in RCW 4.28.100 and .110, 13.34.080, and 26.33.310, and other statutes which provide for service by publication.

(4) Alternative to Service by Publication. In circumstances justifying service by publication, if the serving party files an affidavit stating facts from which the court determines that service by mail is just as likely to give actual notice as service by publication, the court may order that service be made by any person over 18 years of age, who is competent to be a witness, other than a party, by mailing copies of the summons and other process to the party to be served at his last known address or any other address determined by the court to be appropriate. Two copies shall be mailed, postage prepaid, one by ordinary first class mail and the other by a form of mail requiring a signed receipt showing when and to whom it was delivered. The envelopes must bear the return address of the sender. The summons shall contain the date it was deposited in the mail and shall require the defendant to appear and answer the complaint within 90 days from the date of mailing. Service under this subsection has the same jurisdictional effect as service by publication.

(5) Appearance. A voluntary appearance of a defendant does not preclude his right to challenge lack of jurisdiction over his person, insufficiency of process, or insufficiency of service of process pursuant to rule 12(b).

(e) Other Service.

(1) Generally. Whenever a statute or an order of court thereunder provides for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or not found within the state, service may be made under the circumstances and in the manner prescribed by the statute or order, or if there is no provision prescribing the manner of service, in a manner prescribed by this rule.

(2) Personal Service Out of State--Generally. Although rule 4 does not generally apply to personal service out of state, the prescribed form of summons may, with the modifications required by statute, be used for that purpose. See RCW 4.28.180.

(3) Personal Service Out of State--Acts Submitting Person to Jurisdiction of Courts. (Reserved. See RCW 4.28.185.)

(4) Nonresident Motorists. (Reserved. See RCW 46.64.040.)

(f) Territorial Limits of Effective Service. All process other than a subpoena may be served anywhere within the territorial limits of the state, and when a statute or these rules so provide beyond the territorial limits of the state. A subpoena may be served within the territorial limits as provided in rule 45 and RCW 5.56.010.

(g) Return of Service. Proof of service shall be as follows:

(1) If served by the sheriff or his deputy, the return of the sheriff or his deputy endorsed upon or attached to the summons;

(2) If served by any other person, his affidavit of service endorsed upon or attached to the summons; or

(3) If served by publication, the affidavit of the publisher, foreman, principal clerk, or business manager of the newspaper showing the same, together with a printed copy of the summons as published; or

(4) If served as provided in subsection (d)(4), the affidavit of the serving party stating that copies of the summons and other process were sent by mail in accordance with the rule and directions by the court, and stating to whom, and when, the envelopes were mailed.

(5) The written acceptance or admission of the defendant, his agent or attorney;

(6) In case of personal service out of the state, the affidavit of the person making the service, sworn to before a notary public, with a seal attached, or before a clerk of a court of record.

(7) In case of service otherwise than by publication, the return, acceptance, admission, or affidavit must state the time, place, and manner of service. Failure to make proof of service does not affect the validity of the service.

(h) Amendment of Process. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(i) Alternative Provisions for Service in a Foreign Country.

(1) Manner. When a statute or rule authorizes service upon a party not an inhabitant of or found within the state, and service is to be effected upon the party in a foreign country, it is also sufficient if service of the summons and complaint is made: (A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or (B) as directed by the foreign authority in response to a letter rogatory or a letter of request; or (C) upon an individual, by delivery to him personally, and upon a corporation or partnership or association, by delivery to an officer, a managing or general agent; or (D) by any form of mail, requiring a signed receipt, to be addressed and mailed to the party to be served; or (E) pursuant to the means and terms of any applicable treaty or convention; or (F) by diplomatic or consular officers when authorized by the United States Department of State; or (G) as directed by order of the court. Service under (C) or (G) above may be made by any person who is not a party and is not less than 21 years of age or who is designated by order of the court or by the foreign court. The method for service of process in a foreign country must comply with applicable treaties, if any, and must be reasonably calculated, under all the circumstances, to give actual notice.

(2) Return. Proof of service may be made as prescribed by section (g) of this rule, or by the law of the foreign country, or by a method provided in any applicable treaty or convention, or by order of the court. When service is made pursuant to subsection (1)(D) of this section, proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

(j) Other Process. These rules do not exclude the use of other forms of process authorized by law.

RULE 4.1
PROCESS--DOMESTIC RELATIONS ACTIONS

(a) Summons--General. Actions authorized by RCW 26.09 shall be commenced by filing a petition or by service of a copy of a summons together with a copy of the petition on respondent as provided in rule 4. Upon written demand by the respondent, the petitioner shall pay the filing fee and file the summons and petition within 14 days after service of the demand or the service shall be void. No summons is necessary if both

spouses sign a joint petition or if the respondent files a written joinder in the proceeding.

(b) Summons--Content, Form.

(1) Content. The summons shall contain the title of the action, the name of the county and the court in which the action is brought, the names of the parties, as petitioner and respondent, a direction to the respondent to serve a copy of his or her response on the person who has signed the summons, the time limit within which the copy of the response must be served, notice that failure to serve a copy of the response within the stated time may result in a judgment by default, the signature and address of the petitioner or petitioner's attorney, and the date.

(2) Form. The summons for personal service in the state in an action for dissolution of marriage shall be substantially in the form below. The summons for personal service in the state in any other action authorized by RCW 26.09 should be adapted from this form. The summons for personal service out of state should be adapted from this form and must include the modifications required by statute. See RCW 4.28.180.

SUPERIOR COURT OF WASHINGTON
FOR (_____) COUNTY

In the Matter of the Marriage of _____, Petitioner, and _____, Respondent.	)	No. _____ SUMMONS FOR DISSOLUTION OF MARRIAGE

TO THE RESPONDENT: The petitioner has started an action in the above court requesting that your marriage be dissolved. Additional requests, if any, are stated in the petition, a copy of which is attached to this summons.

You must respond to this summons and petition by serving a copy of your written response on the person signing this summons. If you do not serve your written response within 20 days after the date this summons was served on you, exclusive of the day of service, the court may enter an order of default against you, and at the end of 90 days after service and filing, the court may, without further notice to you, enter a decree dissolving your marriage and approving or providing for other relief requested in the petition. If you serve a notice of appearance on the undersigned person, you are entitled to notice before an order of default or a decree may be entered.

You may demand that the petitioner file this action with the court. If you do so, the demand must be in writing and must be served upon the person signing this summons. Within 14 days after you serve the demand, the petitioner must file this action with the court, or the service on you of this summons and petition will be void.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

One method of serving a copy of your response on the petitioner is to send it by certified mail with return receipt requested.

This summons is issued pursuant to rule 4.1 of the Superior Court Civil Rules of the State of Washington.

Dated _____ (signed) _____
_____
Print or Type Name

SERVE A COPY OF YOUR RESPONSE ON:
( ) Petitioner ( ) Petitioner's Attorney
_____
Address
_____
_____
(city) (zip)

RULE CR 4.2
PROCESS - LIMITED REPRESENTATION

(a) An attorney may undertake to provide limited representation in accordance with RPC 1.2 to a person involved in a court proceeding.

(b) Providing limited representation of a person under these rules shall not constitute an entry of appearance by the attorney for purposes of CR 5(b) and does not authorize or require the service or delivery of pleadings, papers or other documents upon the attorney under CR 5(b). Representation of the person by the attorney at any proceeding before a judge, magistrate, or other judicial officer on behalf of the person constitutes an entry of appearance pursuant to RCW 4.28.210 and CR 4(a)(3), except to the extent that a limited notice of appearance as provided for under

CR 70.1 is filed and served prior to or simultaneous with the actual appearance. The attorney's violation of this Rule may subject the attorney to the sanctions provided in CR 11(a).

[Effective October 29, 2002]

RULE CR 5
SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

(a) Service--When Required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in rule 4.

In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

(b) Service--How Made.

(1) On Attorney or Party. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, filing with the clerk of the court an affidavit of attempt to serve. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service on an attorney is subject to the restrictions in subsections (b)(4) and (5) of this rule and in rule 71, Withdrawal by Attorneys.

(2) Service by Mail.

(A) How made. If service is made by mail, the papers shall be deposited in the post office addressed to the person on whom they are being served, with the postage prepaid. The service shall be deemed complete upon the third day following the day upon which they are placed in the mail, unless the third day falls on a Saturday, Sunday or legal holiday, in which event service shall be deemed complete on the first day other than a Saturday, Sunday or legal holiday, following the third day.

(B) Proof of service by mail. Proof of service of all papers permitted to be mailed may be by written acknowledgment of service, by affidavit of the person who mailed the papers, or by certificate of an attorney. The certificate of an attorney may be in form substantially as follows:

CERTIFICATE

I certify that I mailed a copy of the foregoing _____ to (John Smith), (plaintiff's) attorney, at (office address or residence), and to (Joseph Doe), an additional (defendant's) attorney (or attorneys) at (office address or residence), postage prepaid, on (date).

_____
(John Brown)
Attorney for (Defendant) William Noe

(3) Service on Nonresidents. Where a plaintiff or defendant who has appeared resides outside the state and has no attorney in the action, the service may be made by mail if his residence is known; if not known, on the clerk of the court for him. Where a party, whether resident or nonresident, has an attorney in the action, the service of papers shall be upon the attorney instead of the party. If the attorney does not have an office within the state or has removed his residence from the state, the service may be upon him personally either within or without the state, or by mail to him at either his place of residence or his office, if either is known, and if not known, then by mail upon the party, if his residence is known,

whether within or without the state. If the residence of neither the party nor his attorney, nor the office address of the attorney is known, an affidavit of the attempt to serve shall be filed with the clerk of the court.

(4) Service on Attorney Restricted After Final Judgment. A party, rather than the party's attorney, must be served if the final judgment or decree has been entered and the time for filing an appeal has expired, or if an appeal has been taken (i) after the final judgment or decree upon remand has been entered or (ii) after the mandate has been issued affirming the judgment or decree or disposing of the case in a manner calling for no further action by the trial court. This rule is subject to the exceptions defined in subsection (b)(6).

(5) Required Notice to Party. If a party is served under circumstances described in subsection (b)(4), the paper shall (i) include a notice to the party of the right to file written opposition or a response, the time within which such opposition or response must be filed, and the place where it must be filed; (ii) state that failure to respond may result in the requested relief being granted; and (iii) state that the paper has not been served on that party's lawyer.

(6) Exceptions. An attorney may be served notwithstanding subsection (b)(4) of this rule if (i) fewer than 63 days have elapsed since the filing of any paper or the issuance of any process in the action or proceeding or (ii) if the attorney has filed a notice of continuing representation.

(7) Service by Other Means. Service under this rule may be made by delivering a copy by any other means, including facsimile or electronic means, consented to in writing by the person served. Service by facsimile or electronic means is complete on transmission when made prior to 5:00 p.m. on a judicial day. Service made on a Saturday, Sunday, holiday or after 5:00 p.m. on any other day shall be deemed complete at 9:00 a.m. on the first judicial day thereafter; Service by other consented means is complete when the person making service delivers the copy to the agency designated to make delivery. Service under this subsection is not effective if the party making service learns that the attempted service did not reach the person to be served.

(c) Service--Numerous Defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing.

(1) Time. Complaints shall be filed as provided in rule 3(a). Except as provided for discovery materials in section (i) of this rule and for documents accompanying a notice under ER 904(b), all pleadings and other papers after the complaint required to be served upon a party shall be filed with the court either before service or promptly thereafter.

(2) Sanctions. The effect of failing to file a complaint is governed by rule 3. If a party fails to file any other pleading or paper under this rule, the court upon 5 days' notice of motion for sanctions may dismiss the action or strike the pleading or other paper and grant judgment against the defaulting party for costs and terms including a reasonable attorney fee unless good cause is shown for, or justice requires, the granting of an extension of time.

(3) Limitation. No sanc tion shall be imposed if prior to the hearing the pleading or paper other than the complaint is filed and the moving attorney is notified of the filing before he leaves his office for the hearing.

(4) Nonpayment. No further action shall be taken in the pending action and no subsequent pleading or other paper shall be filed until the judgment is paid. No subsequent action shall be commenced upon the same subject matter until the judgment has been paid.

(e) Filing With the Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him or her, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. Papers may be filed by facsimile transmission if permitted elsewhere in these or other rules of court, or if authorized by the clerk of the receiving court. The clerk may refuse to accept for filing any paper presented for that purpose because it is not presented in proper form as required by these rules or any local rules or practices.

(f) Other Methods of Service. Service of all papers other than the summons and other process may also be made as authorized by statute.

(g) Certified Mail. Whenever the use of "registered" mail is authorized by statutes relating to judicial proceedings or by rule of court, "certified" mail, with return receipt requested, may be used.

(h) Service of Papers by Telegraph. [Rescinded.]

(i) Discovery Material Not To Be Filed; Exceptions. Depositions upon oral examinations, depositions upon written questions, interrogatories and responses thereto, requests for production or inspection and responses thereto, requests for admission and responses thereto, and other discovery requests and responses thereto shall not be filed with the court unless for use in a proceeding or trial or on order of the court.

(j) Filing by Facsimile. (Reserved. See GR 17--Facsimile Transmission.)

[Amended effective July 1, 1972; September 1, 1978; September 1, 1983; September 1, 1988; September 1, 1993; September 17, 1993; October 29, 1993; September 1, 2005.]

RULE 6
TIME

(a) Computation. In computing any period of time prescribed or allowed by these rules, by the local rules of any superior court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday nor a legal holiday. Legal holidays are prescribed in RCW 1.16.050. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(b) Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion, (1) with or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or, (2) upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under rules 50(b), 52(b), 59(b), 59(d), and 60(b).

(c) Proceeding Not To Fail for Want of Judge or Session of Court. No proceeding in a court of justice in any action, suit, or proceeding pending therein, is affected by a vacancy in the office of any or all of the judges or by the failure of a session of the court.

(d) For Motions--Affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in rule 59(c), opposing affidavits may be served not later than 1 day before the hearing, unless the court permits them to be served at some other time.

(e) Additional Time After Service by Mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period.

RULE 7
PLEADINGS ALLOWED; FORM OF MOTIONS

(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross claim, if the answer contains a cross claim; a third party complaint, if a person who was not an original party is summoned under the provisions of rule 14; and a third party answer, if a third party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third party answer.

(b) Motions and Other Papers.

(1) How Made. An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in

writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) Form. The rules applicable to captions and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) Signing. All motions shall be signed in accordance with rule 11.

(4) Identification of Evidence. When a motion is supported by affidavits or other papers, it shall specify the papers to be used by the moving party.

(5) Telephonic Argument. Oral argument on civil motions, including family law motions, may be heard by conference telephone call in the discretion of the court. The expense of the call shall be shared equally by the parties unless the court directs otherwise in the ruling or decision on the motion.

(c) Demurrers, Pleas, etc., Abolished. Demurrers, pleas and exceptions for insufficiency of a pleading shall not be used.

(d) Security for Costs. (Reserved. See RCW 4.84.210 et seq.)

RULE 8
GENERAL RULES OF PLEADING

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross claim, or third party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief and (2) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

(b) Defenses; Form of Denials. A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, he may do so by general denial subject to the obligations set forth in rule 11.

(c) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fault of a nonparty, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitation, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) Effect of Failure To Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) Pleading To Be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleadings or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in rule 11.

(f) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice. The adoption of this rule shall not be considered an adoption or approval of the forms of pleading in the Appendix of Forms approved in rule 84, Federal Rules of Civil Procedure.

RULE 9
PLEADING SPECIAL MATTERS

(a) Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, he shall do so by specific negative averment which shall include such supporting particulars as are peculiarly within the pleaders knowledge.

(b) Fraud, Mistake, Condition of the Mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) Condition Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

(d) Official Document or Act. In pleading an official document or official act, it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) Time and Place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special Damage. When items of special damage are claimed, they shall be specifically stated.

(h) Pleading Existence of City or Town. In pleading the existence of any city or town in this state, it shall be sufficient to state in such pleading that the same is an existing city or town, incorporated or organized under the laws of Washington.

(i) Pleading Ordinance. In pleading any ordinance of a county, city or town in this state it shall be sufficient to state the title of such ordinance and the date of its passage, whereupon the court shall take judicial notice of the existence of such ordinance and the tenor and effect thereof.

(j) Pleading Private Statutes. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title, and the day of its passage, and the court shall thereupon take judicial notice thereof.

(k) Foreign Law.

(1) United States Jurisdictions. A party who intends to raise an issue concerning the law of a state, territory, or other jurisdiction of the United States shall set forth in his pleading facts which show that the law of another United States jurisdiction may be applicable, or shall state in his pleading or serve other reasonable written notice that the law of another United States jurisdiction may be relied upon.

(2) Other Jurisdictions. A party who intends to raise an issue concerning the law of a jurisdiction other than a state, territory or other jurisdiction of the United States shall give notice in his pleading of the foreign jurisdiction whose law he contends may be applicable to the facts of the case. The following matters need not be pleaded, but may be discovered pursuant to rule 26:

(i) the party's contentions as to which issues of law are governed by the foreign law;

(ii) the substance of such foreign law;

(iii) the expected effect of such foreign law on the legal issues and on the outcome of the case being tried;

(iv) the specific foreign statutes, regulations, judicial and administrative decisions, documents and other nonprivileged written materials and translations thereof upon which the party intends to rely.

(3) Application of Foreign Law. Issues of foreign law may be simplified pursuant to rule 16 and determined in advance of trial pursuant to rule 56.

(4) Failure To Plead Foreign Law. If no party has requested in his pleadings application of the law of a jurisdiction other than a state, territory or other jurisdiction of the United States, the court at time of trial shall apply the law of the State of Washington unless such application would result in manifest injustice.

(l) Burden of Proof. Nothing in this rule shall be construed to shift or alter the burden of proof.

RULE CR 10
FORM OF PLEADINGS AND OTHER PAPERS

(a) Caption. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number if known to the person signing it, and an identification as to the nature of the pleading or other paper.

(1) Names of Parties. In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

(2) Unknown Names. When the plaintiff is ignorant of the name of the defendant, it shall be so stated in his pleading, and such defendant may be designated in any pleading or proceeding by any name, and when his true name shall be discovered, the pleading or proceeding may be amended accordingly.

(3) Unknown Heirs. When the heirs of any deceased person are proper parties defendant to any action relating to real property in this state, and when the names and residences of such heirs are unknown, such heirs may be proceeded against under the name and title of the "unknown heirs" of the deceased. In any action brought to determine any adverse claim, estate, lien, or interest in real property, or to quiet title to real property, unknown parties shall be designated as "also all other persons or parties unknown claiming any right, title, estate, lien, or interest in the real estate described in the complaint herein."

(b) Paragraphs; Separate Statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence, and each defense other than denials, shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by Reference; Exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

(d) Format Requirements. [Reserved. See GR 14.]

(e) Format Recommendations. It is recommended that all pleadings and other papers include or provide for the following:

(1) Service and Filing. Space should be left at the top of the first page to provide on the right half space for the clerk's filing stamp, and space at the left half for acknowledging the receipt of copies.

(2) Title. All pleadings under the space under the docket number should contain a title indicating their purpose and party presenting them. For example:

USE	DO NOT USE
Petition for Dissolution	Petition
Defendant's Motion for Support, etc.	Motion
Order for Support	Order
Plaintiff's Trial Brief	Trial Brief

(3) Bottom Notation. At the left side of the bottom of each page of all pleadings and other papers an abbreviated name of the pleading or other paper should be repeated, followed by the page number. At the right side of the bottom of the first page of each pleading or other paper the name, mailing address and telephone number of the attorney or firm preparing the paper should be printed or typed.

(4) Typed Names. The names of all persons signing a pleading or other paper should be typed under their signatures.

(5) Headings and Subheadings. Headings and subheadings should be used for all paragraphs which shall be numbered with roman and/or arabic numerals.

(6) Numbered Paper. Use numbered paper.

(f) Personal Idenifiers Prohibited. [Reserved. See GR 31(e).]

(g) Unpublished Opinions. [Reserved. See GR 14.1.]

[Amended effective September 1, 1990; September 1, 2007.]

RULE CR 11
SIGNING OF PLEADINGS, MOTIONS, AND LEGAL MEMORANDA: SANCTIONS

(a) Every pleading, motion, and legal memorandum of a party represented by an attorney shall be dated and signed by at least one attorney of record in the attorney's individual name, whose address and Washington State Bar Association membership number shall be stated. A party who is not represented by an attorney shall sign and date the party's pleading, motion, or legal memorandum and state the party's address. Petitions for dissolution of marriage, separation, declarations concerning the validity of a marriage, custody, and modification of decrees issued as a result of any of the foregoing petitions shall be verified. Other pleadings need not, but may be, verified or accompanied by affidavit. The signature of a party or of an attorney constitutes a certificate by the party or attorney that the party or attorney has read the pleading, motion, or legal memorandum, and that to the best of the party's or attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is well grounded in fact; (2) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. If a pleading, motion, or legal memorandum is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or legal memorandum is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee.

(b) In helping to draft a pleading, motion or document filed by the otherwise self-represented person, the attorney certifies that the attorney has read the pleading, motion, or legal memorandum, and that to the best of the attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is well grounded in fact, (2) it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law, (3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. The attorney in providing such drafting assistance may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts.

[Amended effective January 1, 1974; September 1, 1985; September 1, 1990; September 17, 1993; October 15, 2002; September 1, 2005.]

RULE 12
DEFENSES AND OBJECTIONS

(a) When Presented. A defendant shall serve his answer within the following periods:

(1) Within 20 days, exclusive of the day of service, after the service of the summons and complaint upon him pursuant to rule 4;

(2) Within 60 days from the date of the first publication of the summons if the summons is served by publication in accordance with rule 4(d)(3);

(3) Within 60 days after the service of the summons upon him if the summons is served upon him personally out of the state in accordance with RCW 4.28.180 and 4.28.185 or on the Secretary of State as provided by RCW 46.64.040.

(4) Within the period fixed by any other applicable statutes or rules. A party served with a pleading stating a cross claim against him shall serve an answer thereto within 20 days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within 20

days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court.

(A) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the courts action.

(B) If the court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of the more definite statement.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross claim, or third party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56.

(d) Preliminary Hearings. The defenses specifically enumerated (1)-(7) in section (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in section (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, or if more particularity in that pleading will further the efficient economical disposition of the action, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after the notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion To Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon him or upon the courts own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of Defenses in Motion. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to him. If a party makes a motion under this rule but omits therefrom any defense or objection then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subsection (h)(2) hereof on any of the grounds there stated.

(h) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in section (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under rule 7(a), or by motion fo r judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

(i) Nonparty at Fault. Whenever a defendant or a third party defendant intends to claim for purposes of RCW 4.22.070(1) that a nonparty is at fault, such claim is an affirmative defense which shall be affirmatively pleaded by the party making the claim. The identity of any nonparty claimed to be at fault, if known to the party making the claim, shall also be

affirmatively pleaded.

RULE 13
COUNTERCLAIM AND CROSS CLAIM

(a) Compulsory Counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon his claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this rule.

(b) Permissive Counterclaims. A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) Counterclaim Exceeding Opposing Claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) Counterclaim Against the State. These rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims, or to claim credits against the State or an officer or agency thereof.

(e) Counterclaim Maturing or Acquired After Pleading. A claim which either matured or was acquired by the pleader after serving his pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

(f) Omitted Counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, he may by leave of court set up the counterclaim by amendment.

(g) Cross Claim Against Coparty. A pleading may state as a cross claim any claim by one party against a coparty arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross claim may include a claim that the party against whom it is asserted is or may be liable to the cross claimant for all or part of a claim asserted in the action against the cross claimant.

(h) Joinder of Additional Parties. Persons other than those made parties to the original action may be made parties to a counterclaim or cross claim in accordance with the provisions of rules 19 and 20.

(i) Separate Trials; Separate Judgment. If the court orders separate trials as provided in rule 42(b), judgment on a counterclaim or cross claim may be rendered in accordance with the terms of rule 54(b), even if the claims of the opposing party have been dismissed or otherwise disposed of.

(j) Setoff Against Assignee. The defendant in a civil action upon a contract express or implied, other than upon a negotiable promissory note or bill of exchange, negotiated in good faith and without notice before due, which has been assigned to the plaintiff, may set off a demand of a like nature existing against the person to whom he was originally liable, or any assignee prior to the plaintiff, of such contract, provided such demand existed at the time of the assignment thereof, and belonging to the defendant in good faith, before notice of such assignment, and was such a demand as might have been set off against such person to whom he was originally liable, or such assignee while the contract belonged to him.

(k) Other Setoff Rules. (Reserved. See RCW 4.32.120 through 4.32.150 and RCW 4.56.050 through 4.56.075.)

RULE 14
THIRD PARTY PRACTICE

(a) When Defendant May Bring in Third Party. At any time after commencement of the action a defending party, as a third party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him. The third party plaintiff need not obtain leave to make the service if he files the third party complaint not later than 10 days after he serves his original answer. Otherwise he must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third party complaint, hereinafter called the third party defendant, shall make his defenses to the third party plaintiff's claim as provided in rule 12 and his counterclaims against the third party plaintiff and cross claims against other third party defendants as provided in rule 13. The third party defendant may assert against the plaintiff any

defenses which the third party plaintiff has to the plaintiff's claim. The third party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third party plaintiff. The plaintiff may assert any claim against the third party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third party plaintiff, and the third party defendant thereupon shall assert his defenses as provided in rule 12 and his counterclaims and cross claims as provided in rule 13. Any party may move to strike the third party claim, or for its severance or separate trial. A third party defendant may proceed under this rule against any person not a party to the action who is or may be liable to him for all or part of the claim made in the action against the third party defendant.

(b) When Plaintiff May Bring in Third Party. When a counterclaim is asserted against a plaintiff, he may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.

(c) Tort Cases. This rule shall not be applied in tort cases, to permit the joinder of a liability or indemnity insurance company, unless such company is by statute or contract directly liable to the person injured or damaged.

RULE CR 15
AMENDED AND SUPPLEMENTAL PLEADINGS

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise, a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. If a party moves to amend a pleading, a copy of the proposed amended pleading, denominated "proposed" and unsigned, shall be attached to the motion. If a motion to amend is granted, the moving party shall thereafter file the amended pleading and, pursuant to rule 5, serve a copy thereof on all other parties. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

(b) Amendments To Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

(c) Relation Back of Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him, the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

(d) Supplemental Pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

(e) Interlineations. No amendments shall be made to any pleading by erasing or adding words to the original on file, without first obtaining leave of court.

[Adopted effective July 1, 1967; Amended effective September 1, 2005.]

RULE 16
PRETRIAL PROCEDURE AND FORMULATING ISSUES

(a) Hearing Matters Considered. By order, or on the motion of any party, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider:
(1) The simplification of the issues;
(2) The necessity or desirability of amendments to the pleadings;
(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
(4) The limitation of the number of expert witnesses;
(5) Such other matters as may aid in the disposition of the action.
(b) Pretrial Order. The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pretrial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or to nonjury actions or extend it to all actions.

RULE 17
PARTIES PLAINTIFF AND DEFENDANT; CAPACITY

(-) Designation of Parties. The party commencing the action shall be known as the plaintiff, and the opposite party as the defendant.
(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.
(b) Capacity To Sue or Be Sued. (Reserved.)
(c) Infants, or Incompetent Persons.
(1) Scope. Generally this rule does not affect statutes and rules concerning the capacity of infants and incompetents to sue or be sued.
(2) Guardian ad Litem for Infant. (Reserved. See RCW 4.08.050.)
(3) Guardian ad Litem for Incompetents. (Reserved. See RCW 4.08.060.)
(d) Actions on Assigned Choses in Action. (Reserved. See RCW 4.08.080.)
(e) Public Corporations.
(1) Actions by. (Reserved. See RCW 4.08.110.)
(2) Actions Against. (Reserved. See RCW 4.08.120.)
(f) Tort Actions Against State. (Reserved. See RCW 4.92.)

RULE 18
JOINDER OF CLAIMS AND REMEDIES

(a) Joinder of Claims. A party asserting a claim to relief as an original claim, counterclaim, cross claim, or third party claim, may join, either as independent or as alternate claims, as many claims, legal, equitable, or maritime, as he has against an opposing party.
(b) Joinder of Remedies; Fraudulent Conveyances. Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative

substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to him, without first having obtained a judgment establishing the claim for money.

RULE 19
JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

(a) Persons To Be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (A) as a practical matter impair or impede his ability to protect that interest or (B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

(b) Determination by Court Whenever Joinder Not Feasible. If a person joinable under (1) or (2) of section (a) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: (1) to what extent a judgment rendered in the persons absence might be prejudicial to him or those already parties; (2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; (3) whether a judgment rendered in the persons absence will be adequate; (4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) Pleading Reasons for Nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons joinable under (1) or (2) of section (a) hereof who are not joined, and the reasons why they are not joined.

(d) Exception of Class Actions. This rule is subject to the provisions of rule 23.

(e) Husband and Wife Must Join--Exceptions. (Reserved. See RCW 4.08.030.)

RULE CR 20
PERMISSIVE JOINDER OF PARTIES

(a) Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) Separate Trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.

(c) When Husband and Wife May Join. (Reserved. See RCW 4.08.040.)

(d) Service on Joint Defendants; Procedure After Service. When the action is against two or more defendants and the summons is served on one or more but not on all of them, the

plaintiff may proceed as follows:

(1) If the action is against the defendants jointly indebted upon a contract, he may proceed against the defendants served unless the court otherwise directs; and if he recovers judgment it may be entered against all the defendants thus jointly indebted so far only as it may be enforced against the joint property of all and the separate property of the defendants served.

(2) If the action is against defendants severally liable, he may proceed against the defendants served in the same manner as if they were the only defendants.

(3) Though all the defendants may have been served with the summons, judgment may be taken against any of them severally, when the plaintiff would be entitled to judgment against such defendants if the action had been against them alone.

(e) Procedure To Bind Joint Debtor. (Reserved. See RCW 4.68.)

[Amended effective July 1, 1980.]

RULE 21
MISJOINDER AND NONJOINDER OF PARTIES

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

RULE 22
INTERPLEADER

(a) Rule. Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted under other rules and statutes.

(b) Statutes. The remedy herein provided is in addition to and in no way supersedes or limits the remedy provided by RCW 4.08.150 to 4.08.180, inclusive.

RULE CR 23
CLASS ACTIONS

(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of section (a) are satisfied, and in addition:

(1) The prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of

conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interest; or

(2) The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) The court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

(c) Determination by Order Whether Class Action To Be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions.

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subsection may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subsection (b)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude him from the class if he so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

(3) The judgment in an action maintained as a class action under subsection (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subsection (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subsection (c)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate, (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

(d) Orders in Conduct of Actions. In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders may be combined with an order under rule 16, and may be altered or amended as may be desirable from time to time.

(e) Dismissal or Compromise. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

(f) Disposition of Residual Funds.

(1) "Residual Funds" are funds that remain after the payment of all approved class member claims, expenses, litigation costs, attorneys' fees, and other court-approved disbursements to implement the relief granted. Nothing in this rule is intended to limit the parties to a class action from suggesting, or the trial court from approving, a settlement that does not create residual funds.

(2) Any order entering a judgment or approving a proposed compromise of a class action certified under this rule that establishes a process for identifying and compensating members of the class shall provide for the disbursement of residual funds. In matters where the claims process has

been exhausted and residual funds remain, not less than twenty-five percent (25%) of the residual funds shall be disbursed to the Legal Foundation of Washington to support activities and programs that promote access to the civil justice system for low income residents of Washington State. The court may disburse the balance of any residual funds beyond the minimum percentage to the Legal Foundation of Washington or to any other entity for purposes that have a direct or indirect relationship to the objectives of the underlying litigation or otherwise promote the substantive or procedural interests of members of the certified class.

[Adopted effective July 1, 1967; amended effective January 3, 2006.]

RULE 23.1
DERIVATIVE ACTIONS BY SHAREHOLDERS

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege (a) that the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law, and (b) that the action is not a collusive one to confer jurisdiction on a court of this state which it would not otherwise have. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

RULE 23.2
ACTIONS RELATING TO UNINCORPORATED ASSOCIATIONS

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in rule 23(d), and the procedure for dismissal or compromise of the action shall correspond with that provided in rule 23(e).

RULE 24
INTERVENTION

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicants interest is adequately represented by existing parties.

(b) Permissive Intervention. Upon timely application, anyone may be permitted to intervene in an action:

(1) When a statute confers a conditional right to intervene; or

(2) When an applicants claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirements, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly

delay or prejudice the adjudication of the rights of the original parties.
(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon all the parties as provided in rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.

RULE 25
SUBSTITUTION OF PARTIES

(a) Death.
(1) Procedure. If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by the successors or representatives of the deceased party or by any party and, together with the notice of hearing, shall be served on the parties as provided by rule 5 for service of notices, and upon persons not parties in the manner provided by statute or by rule for the service of a summons. If substitution is not made within the time authorized by law, the action may be dismissed as to the deceased party.
(2) Partial Abatement. In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.
(b) Incompetency. If a party becomes incompetent, the court upon motion served as provided in section (a) of this rule may allow the action to be continued by or against his representative.
(c) Transfer of Interest. In case of any transfer of interest, the action may be continued by or against the original party unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in section (a) of this rule.
(d) Public Offices; Death or Separation From Office. (Reserved.)

RULE 26
GENERAL PROVISIONS GOVERNING DISCOVERY

(a) Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.
(b) Discovery Scope and Limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:
(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.
The frequency or extent of use of the discovery methods set forth in section (a) shall be limited by the court if it determines that: (A) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (B) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (C) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under section (c).
(2) Insurance Agreements. A party may obtain discovery and production of: (i) the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment; and (ii) any documents affecting coverage (such as denying coverage, extending coverage, or reserving rights) from or on behalf of such person to the covered person or the covered person's representative. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this section, an application for insurance shall not be

treated as part of an insurance agreement.

(3) Structured Settlements and Awards. In a case where a settlement or final award provides for all or part of the recovery to be paid in the future, a party entitled to such payments may obtain disclosure of the actual cost to the defendant of making such payments. This disclosure may be obtained during settlement negotiations upon written demand by a party entitled to such payments. If disclosure of cost is demanded, the defendant may withdraw the offer of a structured settlement at any time before the offer is accepted.

(4) Trial Preparation: Materials. Subject to the provisions of subsection (b)(5) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subsection (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this section, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(5) Trial Preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subsection (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A) (i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion, and to state such other information about the expert as may be discoverable under these rules. (ii) A party may, subject to the provisions of this rule and of rules 30 and 31, depose each person whom any other party expects to call as an expert witness at trial.

(B) A party may discover facts known or opinions held by an expert who is not expected to be called as a witness at trial, only as provided in rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subsections (b)(5)(A)(ii) and (b)(5)(B) of this rule; and (ii) with respect to discovery obtained under subsection (b)(5)(A)(ii) of this rule the court may require, and with respect to discovery obtained under subsection (b)(5)(B) of this rule the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(6) Discovery From Treating Health Care Providers. The party seeking discovery from a treating health care provider shall pay a reasonable fee for the reasonable time spent in responding to the discovery. If no agreement for the amount of the fee is reached in advance, absent an order to the contrary under section (c), the discovery shall occur and the health care provider or any party may later seek an order setting the amount of the fee to be paid by the party who sought the discovery. This subsection shall not apply to the provision of records under RCW 70.02 or any similar statute, nor to discovery authorized under any rules for criminal matters.

(7) Treaties or Conventions. If the methods of discovery provided by applicable treaty or convention are inadequate or inequitable and additional discovery is not prohibited by the treaty or convention, a party may employ the discovery methods described in these rules to supplement the discovery method provided by such treaty or convention.

(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the county where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that the contents of a deposition not be disclosed or be disclosed only in a designated way; (7) that a trade secret or other confidential research,

development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Sequence and Timing of Discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) Supplementation of Responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

(2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which (A) he knows that the response was incorrect when made, or (B) he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

(4) Failure to seasonably supplement in accordance with this rule will subject the party to such terms and conditions as the trial court may deem appropriate.

(f) Discovery Conference. At any time after commencement of an action the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court shall do so upon motion by the attorney for any party if the motion includes:

(1) A statement of the issues as they then appear;

(2) A proposed plan and schedule of discovery;

(3) Any limitations proposed to be placed on discovery;

(4) Any other proposed orders with respect to discovery; and

(5) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion.

Each party and his attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party.

Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than 10 days after service of the motion.

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any, and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference authorized by rule 16.

(g) Signing of Discovery Requests, Responses, and Objections. Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and state his address. The signature of the attorney or party constitutes a certification that he has read the request, res ponse, or objection, and that to the best of his knowledge, information, and belief formed after a reasonable inquiry it is: (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection and a party shall not be obligated to take any action with respect to it until it is signed.

If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney fee.

(h) Use of Discovery Materials. A party filing discovery materials on order of the court or for use in a proceeding or trial shall file only those portions upon which the party relies and may file a copy in lieu of the original.

(i) Motions; Conference of Counsel Required. The court will not entertain any motion or objection with respect to rules 26 through 37 unless counsel have conferred with respect to the motion or objection. Counsel for the moving or objecting party shall arrange for a mutually convenient conference in person or by telephone. If the court finds that counsel for any party, upon whom a motion or objection in respect to matters covered by such rules has been served, has willfully refused or failed to confer in good faith, the court may apply the sanctions provided under rule 37(b). Any motion seeking an order to compel discovery or obtain protection shall include counsels certification that the conference requirements of this rule have been met.

(j) Access to Discovery Materials Under RCW 4.24.

(1) In General. For purposes of this rule, "discovery materials" means depositions, answers to interrogatories, documents or electronic data produced and physically exchanged in response to requests for production, and admissions pursuant to rules 26-37.

(2) Motion. The motion for access to discovery materials under the provisions of RCW 4.24 shall be filed in the court that heard the action in which the discovery took place. The person seeking access shall serve a copy of the motion on every party to the action, and on nonparties if ordered by the court.

(3) Decision. The provisions of RCW 4.24 shall determine whether the motion for access to discovery materials should be granted.

RULE CR 27
PERPETUATION OF TESTIMONY

(a) Perpetuation Before Action.

(1) Petition. A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable in any superior court may file a verified petition in the superior court in the county of the residence of any expected adverse party. The petition shall be entitled in the name of the petitioner and shall show:

(A) that the petitioner expects to be a party to an action cognizable in a superior court but is presently unable to bring it or cause it to be brought;

(B) the subject matter of the expected action and his interest therein;

(C) the facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it;

(D) the names or a description of the persons he expects will be adverse parties and their addresses so far as known; and

(E) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) Notice and Service. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least 20 days before the date of hearing the notice shall be served in the manner provided by law for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served personally in the manner provided by law, an attorney who shall represent them and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent, the court shall make such order as deemed appropriate for the protection of the minor or incompetent as provided in RCW 4.08.050 and 4.08.060.

(3) Order and Examination. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these rules; and the court may make orders of the character provided for by rules 34 and 35. For the purpose of applying these rules to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

(4) Use of Deposition. If a deposition to perpetuate testimony is taken under these rules or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any action involving the same subject matter subsequently brought in a

superior court of this state, in accordance with the provisions of rule 32(a).

(b) Perpetuation Pending Appeal. If an appeal has been taken from a judgment of a superior court or before the taking of an appeal if the time therefor has not expired, the superior court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the superior court. In such case the party who desires to perpetuate the testimony may make a motion in the superior court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the superior court. The motion shall show (1) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each; (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by rules 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the superior court.

(c) Perpetuation by Action. This rule does not limit the power of a court to entertain an action to perpetuate testimony.

[Adopted effective July 1, 1967; Amended effective September 1, 2005.]

RULE CR 28
PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN

(-) Within the State. Depositions within the state may be taken before the following officers:

(1) Court Commissioners. (Reserved. See RCW 2.24.040(9) and (10).)
(2) Superior Courts. (Reserved. See RCW 2.28.010(7).)
(3) Judicial Officers. (Reserved. See RCW 2.28.060.)
(4) Judges of Supreme and Superior Courts. (Reserved. See RCW 2.28.080(3).)
(5) Inferior Judicial Officers. (Reserved. See RCW 2.28.090.)
(6) Notaries Public. (Reserved. See RCW 5.28.010 and 42.44.010.)
(7) Special Commissions. (Reserved. See RCW 11.20.030.)

(a) Within the United States. Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony. The term "officer" as used in rules 30, 31, and 32 includes a person appointed by the court or designated by the parties under rule 29.

(b) In Foreign Countries. In a foreign country, depositions may be taken (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or (2) before a person commissioned by the court, and the person so commissioned shall have the power by virtue of his commission to administer any necessary oath and take testimony, or (3) pursuant to a letter rogatory or a letter of request, or (4) pursuant to the means and terms of any applicable treaty or convention. A commission, a letter rogatory, or a letter of request shall be issued on application and notice, and on terms that are just and appropriate. It is not requisite to the issuance of a commission, a letter rogatory, or a letter of request that the taking of the deposition in any other manner is impracticable or inconvenient; and a commission, a letter rogatory, and a letter of request may all be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or by descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in (here name the country)." A letter of request or any other device permitted by any applicable treaty or convention shall be styled in the form prescribed by that treaty or convention. Evidence obtained in response to a letter rogatory or a letter of request need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under these rules.

(c) Disqualification for Interest. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

(d) Equal Terms Required. Any arrangement concerning court reporting services or fees in a case shall be offered to all parties on equal terms. This rule applies to any arrangement or agreement between the person before whom a deposition is taken or a court reporting firm, consortium or other organization

providing a court reporter, and any party or any person arranging or paying for court reporting services in the case, including any attorney, law firm, person or entity with a financial interest in the outcome of the litigation, or person or entity paying for court reporting services in the case.

[Amended effective July 1, 1972; amended effective September 1, 2001; September 1, 2005.]

RULE 29
STIPULATIONS REGARDING DISCOVERY PROCEDURE

Unless the court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these rules for other methods of discovery.

RULE CR 30
DEPOSITIONS UPON ORAL EXAMINATION

(a) When Depositions May Be Taken. After the summons and a copy of the complaint are served, or the complaint is filed, whichever shall first occur, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made under rule 4(e), except that leave is not required (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) if special notice is given as provided in subsection (b)(2) of this rule. The attendance of witnesses may be compelled by subpoena as provided in rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(b) Notice of Examination: General Requirements; Special Notice; Nonstenographic Recording; Production of Documents and Things; Deposition of Organization; Video Tape Recording.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing of not less than 5 days (exclusive of the day of service, Saturdays, Sundays and court holidays) to every other party to the action and to the deponent, if not a party or a managing agent of a party. Notice to a deponent who is not a party or a managing agent of a party may be given by mail or by any means reasonably likely to provide actual notice. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice. A party seeking to compel the attendance of a deponent who is not a party or a managing agent of a party must serve a subpoena on that deponent in accordance with rule 45. Failure to give 5 days notice to a deponent who is not a party or a managing agent of a party may be grounds for the imposition of sanctions in favor of the deponent, but shall not constitute grounds for quashing the subpoena.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go out of the state and will be unavailable for examination unless his deposition is taken before expiration of the 30-day period, and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and his signature constitutes a certification by him that to the best of his knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by rule 11 are applicable to the certification.

If a party shows that when he was served with notice under this subsection (b)(2) he was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) The parties may stipulate in writing or the court may upon motion order that the testimony at a deposition be recorded by other than stenographic means. The stipulation or the order shall designate the person before whom the deposition shall be taken, the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A party may arrange to have a stenographic transcription made at his own expense. Any objections under section (c), any changes made by the witness, his signature identifying the deposition as his own or the statement of the officer that is required if the witness does not sign, as provided in section (e), and the certification of the officer required by section (f)shall be set forth in a writing to accompany a deposition recorded by nonstenographic means.

(5) The notice to a party deponent may be accompanied by a request made in compliance with rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of rule 34 shall apply to the request, including the time established by rule 34(b) for the party to respond to the request.

(6) A party may in his notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. In that event the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters known on which he will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to the matters known or reasonably available to the organization. This subsection (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

(7) The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone or by other electronic means. For the purposes of this rule and rules 28(a), 37(a)(1), 37(b)(1), and 45(d), a deposition taken by telephone or by other electronic means is taken at the place where the deponent is to answer questions propounded to him.

(8) Videotaping of depositions.

(A) Any party may videotape the deposition of any party or witness without leave of court provided that written notice is served on all parties not less than 20 days before the deposition date, and specifically states that the deposition will be recorded on videotape. Failure to so state shall preclude the use of videotape equipment at the deposition, absent agreement of the parties or court order.

(B) No party may videotape a deposition within 120 days of the later of the date of filing or service of the lawsuit, absent agreement of the parties or court order.

(C) On motion of a party made prior to the deposition, the court shall order that a videotape deposition be postponed or begun subject to being continued, on such terms as are just, if the court finds that the deposition is to be taken before the moving party has had an adequate opportunity to prepare, by discovery deposition of the deponent or other means, for cross examination of the deponent.

(D) Unless otherwise stipulated to by the parties, the expense of videotaping shall be borne by the noting party and shall not be taxed as costs. Any party, at that party's expense, may obtain a copy of the videotape.

(E) A stenographic record of the deposition shall be made simultaneously with the videotape at the expense of the noting party.

(F) The area to be used for videotaping testimony shall be suitable in size, have adequate lighting and be reasonably quiet. The physical arrangements shall be fair to all parties. The deposition shall begin by a statement on the record of: (a) the operators name, address and telephone number, (b) the name and address of the operators employer, (c) the date, time and place of the deposition, (d) the caption of the case, (e) the name of the deponent, and (f) the name of the party giving notice of the deposition. The officer before whom the deposition is taken shall be identified and swear the deponent on camera. At the conclusion of the deposition, it shall be stated on the record that the deposition is concluded. When more than one tape is used, the operator shall announce on camera the end of each tape and the beginning of the next tape.

(G) Absent agreement of the parties or court order, if all or any part of the videotape will be offered at trial, the party offering it must order the stenographic record to be fully transcribed at that party's expense. A party intending to offer a videotaped recording of a deposition in evidence shall notify all parties in writing of that intent and the parts of the deposition to be offered within sufficient time for a stenographic transcript to be prepared, and for objections to be made and ruled on before the trial or hearing. Objections to all or part of the deposition shall be made in writing within sufficient time to allow for rulings on them and for editing of the tape. The court shall permit further designations of testimony and objections as fairness may require. In

excluding objectionable testimony or comments or objections of counsel, the court may order that an edited copy of the videotape be made, or that the person playing the tape at trial suppress the objectionable portions of the tape. In no event, however, shall the original videotape be affected by any editing process.

(H) After the deposition has been taken, the operator of the videotape equipment shall attach to the videotape a certificate that the recording is a correct and complete record of the testimony by the deponent. Unless otherwise agreed by the parties on the record, the operator shall retain custody of the original videotape. The custodian shall store it under conditions that will protect it against loss or destruction or tampering, and shall preserve as far as practicable the quality of the tape and the technical integrity of the testimony and images it contains. The custodian of the original videotape shall retain custody of it until 6 months after final disposition of the action, unless the court, on motion of any party and for good cause shown, orders that the tape be preserved for a longer period.

(I) The use of videotaped depositions shall be subject to rule 32.

(c) Examination and Cross Examination; Record of Examination; Oath; Objections. Examination and cross examination of witnesses may proceed as permitted at the trial under the provisions of the Washington Rules of Evidence (ER). The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subsection (b)(4) of this rule. If requested by one of the parties, the testimony shall be transcribed.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. A judge of the superior court, or a special master if one is appointed pursuant to rule 53.3, may make telephone rulings on objections made during depositions. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Motion To Terminate or Limit Examination. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the county where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) Submission to Witness; Changes; Signing. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by the witness, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under rule 32(d)(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) Certification and Service by Officer; Exhibits; Copies; Notice.

(1) The officer shall certify on the deposition transcript that the witness was duly sworn and that the transcript is a true record of the testimony given by the witness. The officer shall then secure the transcript in an envelope endorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall promptly serve it on the person who ordered the transcript, unless the court orders otherwise. Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (A) the person producing the materials may substitute copies to be marked for identification, if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, and (B) if the person producing the materials requests their return, the officer shall mark them, give each

party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to the deposition transcript and filed with the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition transcript to any party or the deponent.

(3) The officer serving or filing the deposition transcript shall give prompt notice of such action to all parties and file such notice with the clerk of the court.

(g) Failure To Attend or To Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney fees.

(h) Conduct of Depo sitions. The following shall govern deposition practice:

(1) Conduct of Examining Counsel. Examining counsel will refrain from asking questions he or she knows to be beyond the legitimate scope of discovery, and from undue repetition.

(2) Objections. Only objections which are not reserved for time of trial by these rules or which are based on privileges or raised to questions seeking information beyond the scope of discovery may be made during the course of the deposition. All objections shall be concise and must not suggest or coach answers from the deponent. Argumentative interruptions by counsel shall not be permitted.

(3) Instructions Not To Answer. Instructions to the deponent not to answer questions are improper, except when based upon privilege or pursuant to rule 30(d). When a privilege is claimed the deponent shall nevertheless answer questions related to the existence, extent, or waiver of the privilege, such as the date of communication, identity of the declarant, and in whose presence the statement was made.

(4) Responsiveness. Witnesses shall be instructed to answer all questions directly and without evasion to the extent of their testimonial knowledge, unless properly instructed by counsel not to answer.

(5) Private Consultation. Except where agreed to, attorneys shall not privately confer with deponents during the deposition between a question and an answer except for the purpose of determining the existence of privilege. Conferences with attorneys during normal recesses and at adjournment are permissible unless prohibited by the court.

(6) Courtroom Standard. All counsel and parties shall conduct themselves in depositions with the same courtesy and respect for the rules that are required in the courtroom during trial.

[Amended effective July 1, 1972; April 2, 1979; September 1, 1985; September 1, 1988; September 1, 1989; September 1, 1993; September 1, 2005.]

RULE 31
DEPOSITIONS UPON WRITTEN QUESTIONS

(a) Serving Questions; Notice. After the summons and a copy of the complaint are served, or the complaint is filed, whichever shall first occur, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is

to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of rule 30(b)(6).

Within 15 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) Officer To Take Responses and Prepare Record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by rule 30(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and serve the deposition transcript, attaching thereto the copy of the notice and the questions received by the officer, on the party taking the deposition, unless the court orders otherwise.

(c) Notice of Service. When the deposition has been served, the officer shall promptly give notice of its service to all other parties and file such notice with the clerk of the court.

RULE 32
USE OF DEPOSITIONS IN COURT PROCEEDINGS

(a) Use of Depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the Rules of Evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness or for any purpose permitted by the Rules of Evidence.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (A) that the witness is dead; or (B) that the witness resides out of the county and more than 20 miles from the place of trial, unless it appears that the absence of the witness was procured by the party offering the deposition or unless the witness is an out-of-state expert subject to subsection (a)(5)(A) of this rule; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

(5) The deposition of an expert witness may be used as follows:

(A) The discovery deposition of an opposing partys rule 26(b)(5) expert witness, who resides outside the state of Washington, may be used if reasonable notice before the trial date is provided to all parties and any party against whom the deposition is intended to be used is given a reasonable opportunity to depose the expert again.

(B) The deposition of a health care professional, even though available to testify at trial, taken with the expressly stated purpose of preserving the deponents testimony for trial, may be used if, before the taking of the deposition, there has been compliance with discovery requests made pursuant to rules 26(b)(5)(A)(i), 33, 34, and 35 (as applicable) and if the opposing party is afforded an adequate opportunity to prepare, by discovery deposition of the deponent or other means, for cross examination of the deponent.

Substitution of parties pursuant to rule 25 does not affect the right to use depositions previously taken; and, when an action has been brought in any court of the United States or of any state and another action involving the same issues and subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor. A deposition previously taken may also be used as permitted by the Rules of Evidence.

(b) Objections to Admissibility. Subject to the provisions of rule 28(b) and subsection (d)(3) of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) Effect of Taking or Using Depositions. A party does not make a

person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition under subsection (a)(2) of this rule. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

(d) Effect of Errors and Irregularities in Depositions.

(1) As to Notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) As to Disqualification of Officer. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) As to Taking of Deposition.

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.

(4) As to Completion and Return of Deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under rules 30 and 31 a re waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

RULE 33
INTERROGATORIES TO PARTIES

(a) Availability; Procedures for Use. Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after the summons and a copy of the complaint are served upon the defendant, or the complaint is filed, whichever shall first occur, and upon any other party with or after service of the summons and complaint upon that party.

Interrogatories shall be so arranged that after each separate question there shall appear a blank space reasonably calculated to enable the answering party to place the written response. In the event the responding party either chooses to place the response on a separate page or pages or must do so in order to complete the response, the responding party shall clearly denote the number of the question to which the response relates, including the subpart thereof if applicable. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 40 days after service of the summons and complaint upon that defendant. The parties may stipulate or any party may move for an order under rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

(b) Scope; Use at Trial. Interrogatories may relate to any matters which can be inquired into under rule 26(b), and the answers may be used to the extent permitted by the Rules of Evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

An interrogatory otherwise proper is not objectionable merely because the propounding party may have other access to the requested information or has the burden of proof on the subject matter of the interrogatory at trial.

(c) Option To Produce Business Records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

SUPERIOR CIVIL RULE 34
PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES

(a) Scope. Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of rule 26(b).

(b) Procedure. The request may, without leave of court, be served upon the plaintiff after the summons and a copy of the complaint are served upon the defendant, or the complaint is filed, whichever shall first occur, and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 40 days after service of the summons and complaint upon that defendant. The parties may stipulate or the court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The party submitting the request may move for an order under rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(c) Persons Not Parties. This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

RULE 35
PHYSICAL AND MENTAL EXAMINATION OF PERSONS

(a) Examination.

(1) Order for Examination. When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical examination by a physician, or mental examination by a physician or psychologist or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(2) Representative at Examination. The party being examined may have a representative present at the examination, who may observe but not interfere with or obstruct the examination.

(3) Recording of Examination. Unless otherwise ordered by the court, the party being examined or that party's representative may make an audiotape recording of the examination which shall be made in an unobtrusive manner. A videotape recording of the examination may be made on agreement of the parties or by order of the court.

(b) Report of Examining Physician or Psychologist. The party causing the examination to be made shall deliver to the party or person examined a copy of a detailed written report of the examining physician or psychologist setting out the examiner's findings, including results of all tests made, diagnosis and conclusions, together with like reports of all earlier examinations of the same condition, regardless of whether the examining physician or psychologist will be called to testify at trial. The report shall be delivered within 45 days of the examination and in no event less than 30 days prior to trial. These deadlines may be altered by agreement of the parties or by order of the court. If a physician or psychologist fails or refuses to make a report in compliance herewith the court shall exclude the examiner's testimony if offered at the trial, unless good cause for noncompliance is shown.

(c) Examination by Agreement. Subsections (a) (2) and (3) and (b) apply to examinations made by agreement of the parties, unless the agreement expressly provides otherwise.

RULE 36
REQUESTS FOR ADMISSION

(a) Request for Admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after the summons and a copy of the complaint are served upon the defendant, or the complaint is filed, whichever shall first occur, and upon any other party with or after service of the summons and complaint upon that party. Requests for admission shall not be combined in the same document with any other form of discovery.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 40 days after service of the summons and complaint upon him. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial or a

central fact in dispute may not, on that ground alone, object to the request; he may, subject to the provisions of rule 37(c), deny the matter or set forth reasons why he cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(b) Effect of Admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of rule 16 governing amendment of a pretrial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

RULE CR 37
FAILURE TO MAKE DISCOVERY: SANCTIONS

(a) Motion for Order Compelling Discovery. A party, upon reasonable notice to other parties and all persons affected thereby, and upon a showing of compliance with rule 26(i), may apply to the court in the county where the deposition was taken, or in the county where the action is pending, for an order compelling discovery as follows:

(1) Appropriate Court. An application for an order to a party may be made to the court in which the action is pending, or on matters relating to a deposition, to the court in the county where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the court in the county where the deposition is being taken.

(2) Motion. If a deponent fails to answer a question propounded or submitted under rules 30 or 31, or a corporation or other entity fails to make a designation under rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under rule 33, or if a party, in response to a request for inspection submitted under rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, any party may move for an order compelling an answer or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to rule 26(c).

(3) Evasive or Incomplete Answer. For purposes of this section an evasive or incomplete answer is to be treated as a failure to answer.

(4) Award of Expenses of Motion. If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure To Comply With Order.

(1) Sanctions by Court in County Where Deposition Is Taken. If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the county in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) Sanctions by Court in Which Action Is Pending. If a party or an officer, director, or managing agent of a party or a person designated under rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under section (a) of this rule or rule 35, or if a party fails to obey an order entered under rule 26(f), the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceedings or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to physical or mental examination;

(E) Where a party has failed to comply with an order under rule 35(a) requiring him to produce another for examination such orders as are listed in sections (A), (B), and (C) of this subsection, unless the party failing to comply shows that he is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Expenses on Failure To Admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney fees. The court shall make the order unless it finds that:

(1) the request was held objectionable pursuant to rule 36(a); or

(2) the admission sought was of no substantial importance; or

(3) the party failing to admit had reasonable ground to believe the fact was not true or the document was not genuine; or

(4) there was other good reason for the failure to admit.

(d) Failure of Party To Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Production or Inspection. If a party or an officer, director, or managing agent of a party or a person designated under rule 30(b)(6) or 31(a) to testify on behalf of a party fails;

(1) to appear before the officer who is to take his or her deposition, after being served with a proper notice; or

(2) to serve answers or objections to interrogatories submitted under rule 33, after proper service of the interrogatories; or

(3) to serve a written response to a request for production of documents or inspection submitted under rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under sections (A), (B), and (C) of subsection (b)(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising the party or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subsection may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by rule 26(c). For purposes of this section, an evasive or misleading answer is to be treated as a failure to answer.

(e) Failure To Participate in the Framing of a Discovery Plan. If a party or his attorney fails to participate in good faith in the framing of a discovery plan by agreement as is required by rule 26(f), the court may, after opportunity for hearing, require such party or his attorney to pay to any other party the reasonable expenses, including attorney fees, caused by the failure.

[Amended effective July 1, 1972; September 1, 1985; September 1, 1992; September 1, 1993.]

RULE CR 38
JURY TRIAL OF RIGHT

(-) Defined. A trial is the judicial examination of the issues between the parties, whether they are issues of law or of fact.

(a) Right of Jury Trial Preserved. The right of trial by jury as declared by article 1, section 21 of the constitution or as given by a statute shall be preserved to the parties inviolate.

(b) Demand for Jury. At or prior to the time the case is called to be set for trial, any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing, by filing the demand with the clerk, and by paying the jury fee required by law. If before the case is called to be set for trial no party serves or files a demand that the case be tried by a jury of twelve, it shall be tried by a jury of six members with the concurrence of five being required to reach a verdict.

(c) Specification of Issues. In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) Waiver of Jury. The failure of a party to serve a demand as required by this rule, to file it as required by this rule, and to pay the jury fee required by law in accordance with this rule, constitutes a waiver by him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

[Amended effective January 1, 1972; July 29, 1973; August 7, 1981.]

RULE 39
TRIAL BY JURY OR BY THE COURT

(-) Issues--How Tried. (Reserved. See RCW 4.40.010 through 4.40.070.)

(a) By Jury.

(1) Rule. When trial by jury has been demanded as provided in rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (A) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (B) the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the constitution or statutes of the state.

(2) Questions of Fact for Jury. (Reserved. See RCW 4.44.090.)

(b) By the Court.

(1) Rule. Issues not demanded for trial by jury as provided in rule 38 shall be tried by the court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by a jury of any or all issues.

(2) Questions of Law To Be Decided by Court. (Reserved. See RCW 4.44.080.)

(c) Advisory Jury and Trial by Consent. In all actions not triable of right by a jury the court, upon motion or of its own initiative, may try an issue with an advisory jury or it may, with the consent of both parties, order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

RULE 40
ASSIGNMENT OF CASES

(a) Notice of Trial--Note of Issue.

(1) Of Fact. At any time after the issues of fact are completed in any case by the service of complaint and answer or reply when necessary, as herein provided, either party may cause the issues of fact to be brought on for trial, by serving upon the opposite party a notice of trial at least 3 days before any day provided by rules of court for setting causes for trial, which notice shall give the title of the cause as in the pleadings, and notify the opposite party that the issues in such action will be brought on for trial at the time set by the court; and the party giving such notice of trial shall, at least 5 days before the day of setting such causes for trial, file with the clerk of the court a note of issue containing the title of the action, the names of the attorneys and the date when the last pleading was served; and the clerk shall thereupon enter the cause upon the trial docket according to the date of the issue.

(2) Of Law. In case an issue of law raised upon the pleadings is desired to be brought on for argument, either party shall, at least 5 days before the day set apart by the court under its rules for hearing issues of law, serve upon the opposite party a like notice of trial and furnish the clerk of the court with a note of issue as above provided, which note of issue shall specify that the issue to be tried is an issue of law; and the clerk of the court shall thereupon enter such action upon the motion docket of the court.

(3) Adjournments. When a cause has once been placed upon either docket of the court, if not tried or argued at the time for which notice was given, it need not be noticed for a subsequent session or day, but shall remain upon the docket from session to session or from law day to law day until final disposition or stricken off by the court.

(4) Filing Note by Opposite Party. The party upon whom notice of trial is served may file the note of issue and cause the action to be placed upon the calendar without further notice on his part.

(5) Issue May Be Brought to Trial by Either Party. Either party, after the notice of trial, whether given by himself or the adverse party, may bring the issue to trial, and in the absence of the adverse party, unless the court for good cause otherwise directs, may proceed with his case, and take a dismissal of the action, or a verdict or judgment, as the case may require.

(b) Methods. Each superior court may provide by local rule for placing of actions upon the trial calendar (1) without request of the parties or (2) upon request of a party and notice to the other parties or (3) in such other manner as the court deems expedient.

(c) Preferences. In setting cases for trial, unless otherwise

provided by statute, preference shall be given to criminal over civil cases, and cases where the defendant or a witness is in confinement shall have preference over other cases.

(d) Trials. When a cause is set and called for trial, it shall be tried or dismissed, unless good cause is shown for a continuance. The court may in a proper case, and upon terms, reset the same.

(e) Continuances. A motion to continue a trial on the ground of the absence of evidence shall only be made upon affidavit showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it, and also the name and address of the witness or witnesses. The court may also require the moving party to state upon affidavit the evidence which he expects to obtain; and if the adverse party admits that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be continued. The court, upon its allowance of the motion, may impose terms or conditions upon the moving party.

(f) Change of Judge. Any right under RCW 4.12.050 to seek disqualification of a judge will be deemed waived unless, in addition to the limitations in the statute, the motion and affidavit is filed with the court no later than thirty days prior to trial before a pre-assigned judge. For purposes of this rule, "trial" includes any review or appeal from an administrative body. If a case is reassigned to a different judge less than forty days prior to trial, a party may then move for a change of judge within ten days of such reassignment, unless the moving party has previously made such a motion.

RULE 41
DISMISSAL OF ACTIONS

(a) Voluntary Dismissal.
(1) Mandatory. Subject to the provisions of rules 23(e) and 23.1, any action shall be dismissed by the court:
(A) By stipulation. When all parties who have appeared so stipulate in writing; or
(B) By plaintiff before resting. Upon motion of the plaintiff at any time before plaintiff rests at the conclusion of his opening case.
(2) Permissive. After plaintiff rests after his opening case, plaintiff may move for a voluntary dismissal without prejudice upon good cause shown and upon such terms and conditions as the court deems proper.
(3) Counterclaim. If a counterclaim has been pleaded by a defendant prior to the service upon him of plaintiff's motion for dismissal, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court.
(4) Effect. Unless otherwise stated in the order of dismissal, the dismissal is without prejudice, except that an order of dismissal operates as an adjudication upon the merits when obtained by a plaintiff who has once dismissed an action based on or including the same claim in any court of the United States or of any state.
(b) Involuntary Dismissal; Effect. For failure of the plaintiff to prosecute or to comply with these rules or any order of the court, a defendant may move for dismissal of an action or of any claim against him or her.
(1) Want of Prosecution on Motion of Party. Any civil action shall be dismissed, without prejudice, for want of prosecution whenever the plaintiff, counterclaimant, cross claimant, or third party plaintiff neglects to note the action for trial or hearing within 1 year after any issue of law or fact has been joined, unless the failure to bring the same on for trial or hearing was caused by the party who makes the motion to dismiss. Such motion to dismiss shall come on for hearing only after 10 days' notice to the adverse party. If the case is noted for trial before the hearing on the motion, the action shall not be dismissed.
(2) Dismissal on Clerk's Motion.
(A) Notice. In all civil cases in which no action of record has occurred during the previous 12 months, the clerk of the superior court shall notify the attorneys of record by mail that the court will dismiss the case for want of prosecution unless, within 30 days following the mailing of such notice, a party takes action of record or files a status report with the court indicating the reason for inactivity and projecting future activity and a case completion date. If the court does not receive such a status report, it shall, on motion of the clerk, dismiss the case without prejudice and without cost to any party.
(B) Mailing notice; reinstatement. The clerk shall mail notice of impending dismissal not later than 30 days after the case becomes eligible for dismissal because of inactivity. A party who does not receive the clerk's notice shall be entitled to reinstatement of the case, without cost, upon motion brought within a reasonable time after learning of the dismissal.
(C) Discovery in process. The filing of a document indicating that discovery is occurring between the parties

shall constitute action of record for purposes of this rule.

(D) Other grounds for dismissal and reinstatement. This rule is not a limitation upon any other power that the court may have to dismiss or reinstate any action upon motion or otherwise.

(3) Defendant's Motion After Plaintiff Rests. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subsection and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under rule 19, operates as an adjudication upon the merits.

(c) Dismissal of Counterclaim, Cross Claim, or Third Party Claim. The provisions of this rule apply to the dismissal of any counterclaim, cross claim, or third party claim. A voluntary dismissal by the claimant alone pursuant to subsection (a)(1) of this rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

(d) Costs of Previously Dismissed Action. If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of taxable costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

(e) Notice of Settlements. If a case is settled after it has been assigned for trial, it shall be the duty of the attorneys or of any party appearing pro se to notify the court promptly of the settlement. If the settlement is made within 5 days before the trial date, the notice shall be made by telephone or in person. All notices of settlement shall be confirmed in writing to the clerk.

RULE CR 42
CONSOLIDATION; SEPARATE TRIALS

(a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) Separate Trials. The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross claim, counterclaim, or third party claim, or of any separate issue or of any number of claims, cross claims, counterclaims, third party claims, or issues, always preserving inviolate the right of trial by jury.

[Adopted effective July 1, 1967.]

RULE CR 43
TAKING OF TESTIMONY

(a) Testimony.

(1) Generally. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise directed by the court or provided by rule or statute.

(2) Multiple Examinations. When two or more attorneys are upon the same side trying a case, the attorney conducting the examination of a witness shall continue until the witness is excused from the stand; and all objections and offers of proof made during the examination of such witness shall be made or announced by the attorney who is conducting the examination or cross examination.

(b) and (c) (Reserved. See ER 103 and 611.)

(d) Oaths of Witnesses.

(1) Administration. The oaths of all witnesses in the superior court

(A) shall be administered by the judge;

(B) shall be administered to each witness individually; and

(C) the witness shall stand while the oath is administered.

(2) Applicability. This rule shall not apply to civil ex parte proceedings or default divorce cases and in such cases the manner of swearing witnesses shall be as each superior court may prescribe.

(3) Affirmation in Lieu of Oath. Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(e) Evidence on Motions.

(1) Generally. When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

(2) For injunctions, etc. On application for injunction or motion to dissolve an injunction or discharge an attachment, or to appoint or discharge a receiver, the notice thereof shall designate the kind of evidence to be introduced on the hearing. If the application is to be heard on affidavits, copies thereof must be served by the moving party upon the adverse party at least 3 days before the hearing. Oral testimony shall not be taken on such hearing unless permission of the court is first obtained and notice of such permission served upon the adverse party at least 3 days before the hearing. This rule shall not be construed as pertaining to applications for restraining orders or for appointment of temporary receivers.

(f) Adverse Party as Witness.

(1) Party or Managing Agent as Adverse Witness. A party, or anyone who at the time of the notice is an officer, director, or other managing agent (herein collectively referred to as "managing agent") of a public or private corporation, partnership or association which is a party to an action or proceeding may be examined at the instance of any adverse party. Attendance of such deponent or witness may be compelled solely by notice (in lieu of a subpoena) given in the manner prescribed in rule 30(b) (1) to opposing counsel of record. Notices for the attendance of a party or of a managing agent at the trial shall be given not less than 10 days before trial (exclusive of the day of service, Saturdays, Sundays, and court holidays). For good cause shown in the manner prescribed in rule 26(c), the court may make orders for the protection of the party or managing agent to be examined.

(2) Effect of Discovery, etc. A party who has served interrogatories to be answered by the adverse party or who has taken the deposition of an adverse party or of the managing agent of an adverse party shall not be precluded for that reason from examining such adverse party or managing agent at the trial. Matters admitted by the adverse party or managing agent in interrogatory answers, deposition testimony, or trial testimony are not conclusively established and may be rebutted.

(3) Refusal To Attend and Testify; Penalties. If a party or a managing agent refuses to attend and testify before the officer designated to take his deposition or at the trial after notice served as prescribed in rule 30(b)(1), the complaint, answer, or reply of the party may be stricken and judgment taken against the party, and the contumacious party or managing agent may also be proceeded against as in other cases of contempt. This rule shall not be construed:

(A) to compel any person to answer any question where such answer might tend to incriminate him;

(B) to prevent a party from using a subpoena to compel the attendance of any party or managing agent to give testimony by deposition or at the trial; nor

(C) to limit the applicability of any other sanctions or penalties provided in rule 37 or otherwise for failure to attend and give testimony.

(g) Attorney as Witness. If any attorney offers himself as a witness on behalf of his client and gives evidence on the merits, he shall not argue the case to the jury, unless by permission of the court.

(h) Report or Transcript as Evidence. Whenever the testimony of a witness at a trial or hearing which was reported is admissible in evidence at a later trial, it may be proved by the transcript thereof duly certified by the person who reported the testimony.

(i) (Reserved. See ER 804.)

(j) Report of Proceedings in Retrial of Nonjury Cases. In the event a cause has been remanded by the court for a new trial or the taking of further testimony, and such cause shall have been tried without a jury, and the testimony in such cause shall have been taken in full and used as the report of proceedings upon review, either party upon the retrial of such cause or the taking of further testimony therein shall have the right, provided the court shall so order after an application on 10 days' notice to the opposing party or parties, to submit said report of proceedings as the testimony in said cause upon its second hearing, to the same effect as if the witnesses called by him in the earlier hearing had been called, sworn, and testified in the further hearing; but no party shall be denied the right to submit other or further testimony upon such retrial or further hearing, and the party having the right of cross examination shall have the privilege of subpoenaing any witness whose testimony is contained in such report of proceedings for further cross examination.

(k) Juror Questions for Witnesses. The court shall permit jurors to submit to the court written questions directed to witnesses. Counsel shall be given an opportunity to object to such questions in a manner that does not inform the jury that an objection was made. The court shall establish procedures for submitting, objecting to, and answering questions from jurors to witnesses. The court may rephrase or reword questions from jurors to witnesses. The court may refuse on its own motion to allow a particular question from a juror to a witness.

[Amended effective January 1, 1977; April 2, 1979; September 1, 1988; amended effective October 1, 2002; September 1, 2006.]

RULE 44
PROOF OF OFFICIAL RECORD

(a) Authentication.

(1) Domestic. An official record kept within the United States, or any state, district, or commonwealth, territory, or within a territory subject to the administrative or judicial jurisdiction of the United States, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by the officer's deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office or official custody of the seal of the political subdivision and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of the officer's office or the seal of the political subdivision.

(2) Foreign. A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice-consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, either admit an attested copy without final certification or permit the foreign official record to be evidenced by an attested summary with or without a final certification. The final certification is unnecessary if the record and the attestation are certified as provided in a treaty or convention to which the United States and the foreign country in which the official record is located are parties.

(b) Lack of Record. A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records, designated by the statement, authenticated as provided in subsection (a)(1) of this rule in the case of a domestic record, or complying with the requirements of subsection (a)(2) of this rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(c) Other Proof. This rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

RULE 44.1
DETERMINATION OF FOREIGN LAW

(a) Pleading. A party who intends to raise an issue concerning the law of a state, territory, or other jurisdiction of the United States, or a foreign country shall give notice in his pleadings in accordance with rule 9(k).

(b) United States Jurisdiction. The law of a state, territory, or other jurisdiction of the United States shall be determined as provided in RCW 5.24.

(c) Other Jurisdictions. The court, in determining the law of any jurisdiction other than a state, territory, or other jurisdiction of the United States, may consider any relevant written material or other source, including testimony, having due regard for their trustworthiness, whether or not submitted by a party and whether or not admissible under the Rules of Evidence. If the court considers any material or source not received in open court, prior to its determination the court shall:

(1) Identify in the record such material or source;

(2) Summarize in the record any unwritten information received; and

(3) Afford the parties an opportunity to respond thereto. The courts determination shall be treated as a ruling on a question of law.

RULE 45
SUBPOENA

(a) Form; Issuance.

(1) Every subpoena shall:

(A) state the name of the court from which it is issued;

(B) state the title of the action, the name of the court in which it is pending, and its case number;

(C) command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified; and

(D) set forth the text of subsections (c) and (d) of this rule.

(2) A subpoena for attendance at a deposition shall state the method for recording the testimony.

(3) A command to a person to produce evidence or to permit inspection may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately. A party may be compelled to produce evidence at a deposition or permit inspection only in accordance with rule 34.

(4) A subpoena may be issued by the court in which the action is pending under the seal of that court or by the clerk in response to a praecipe. An attorney of record of a party or other person authorized by statute may issue and sign a subpoena, subject to RCW 5.56.010.

(b) Service.

(1) A subpoena may be served by any suitable person over 18 years of age by giving the person named therein a copy thereof, or by leaving a copy at the place of such person's abode. When service is made by any person other than an officer authorized to serve process, proof of service shall be made by affidavit.

(2) A subpoena commanding production of documents and things, or inspection of premises, without a command to appear for deposition, hearing or trial, shall be served on each party in the manner prescribed by rule 5(b). Such service shall be made no fewer than five days prior to service of the subpoena on the person named therein, unless the parties otherwise agree or the court otherwise orders for good cause shown. A motion for such an order may be made ex parte.

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to subsection (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce and all other parties, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:
(i) fails to allow reasonable time for compliance;
(ii) fails to comply with RCW 5.56.010 or subsection (e)(2) of this rule;
(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
(iv) subjects a person to undue burden, provided that the court may condition denial of the motion upon a requirement that the subpoenaing party advance the reasonable cost of producing the books, papers, documents, or tangible things.

(B) If a subpoena
(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(e) Subpoena for Taking Deposition, Producing Documents, or Permitting Inspection.

(1) Witness Fees and Mileage. [Reserved. See RCW 2.40.020.]

(2) Place of Examination. A resident of the state may be required to attend an examination, produce documents, or permit inspection only in the county where the person resides or is employed or transacts business in person, or at such other convenient place as is fixed by an order of the court. A nonresident of the state may be required to attend an examination, produce documents, or permit inspection only in the county where the person is served with a subpoena, or within 40 miles from the place of service, or at such other convenient place as is fixed by an order of the court.

(3) Foreign Proceedings for Local Actions. When the place of examination, production, or inspection is in another state, territory, or country, the party desiring to take the deposition, obtain production, or conduct inspection may secure the issuance of a subpoena or equivalent process in accordance with the laws of such state, territory, or country.

(4) Local Depositions for Foreign Actions. When any officer or person is authorized to take depositions in this state by the law of another state, territory, or country, with or without a commission, a subpoena to require attendance before such officer or person may be issued by any court of this state for attendance at any place within its jurisdiction.

(f) Subpoena For Hearing or Trial.

(1) When Witnesses Must Attend -- Fees and Allowances.

[Reserved. See RCW 5.56.010.]

(2) When Excused. A witness subpoenaed to attend in a civil case is dismissed and excused from further attendance as soon as the witness has given testimony in chief and has been cross-examined thereon, unless either party moves in open court that the witness remain in attendance and the court so orders. Witness fees will not be allowed any witness after the day on which the witness' testimony is given, except when the witness has in open court been required to remain in further attendance, and when so required the clerk shall note that fact.

(g) Contempt.

Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a non-party to attend a deposition, produce documents, or permit inspection at a place not within the limits provided by subsection (e)(2).

(h) Form. A subpoena should be substantially in the form below.

[Amended effective July 1, 1972; September 1, 1983; September 1, 1993; September 1, 2007.]

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45 FORM - SUBPOENA IN A CIVIL CASE (WORD)

The contents of this item are only available on-line.

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45 FORM - SUBPOENA IN A CIVIL CASE - FORMATTED VERSION (WORD)

The contents of this item are only available on-line.

RULE 46
EXCEPTIONS UNNECESSARY

Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him.

RULE CR 47
JURORS

(a) Examination of Jurors. The court may examine the prospective jurors to the extent it deems appropriate, and shall permit the parties or their attorneys to ask reasonable questions.

(b) Alternate Jurors. The court may direct that not more than six jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. Each side is entitled to one peremptory challenge in addition to those otherwise allowed by law if one or two alternate jurors are to be impaneled, two peremptory challenges if three or four alternate jurors are to be impaneled, and three peremptory challenges if five or six alternate jurors are to be impaneled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by law shall not be used against an alternate juror. An alternate juror who does not replace a regular juror may be discharged or temporarily excused after the jury retires to consider its verdict. When an alternate juror is temporarily excused but not discharged, the trial judge shall take appropriate steps to protect such juror from influence, interference or publicity which might affect that jurors ability to remain impartial, and the trial judge may conduct brief voir dire before seating such alternate juror for any trial

or deliberations. An alternate juror may be recalled at any time that a regular juror is unable to serve, including a second phase of any trial that is bifurcated. If the jury has commenced deliberations prior to the replacement of a regular juror with an alternate juror, the jury shall be instructed to disregard all previous deliberations and to begin deliberations anew.

(c) Procedure When Juror Becomes Ill. (Reserved. See RCW 4.44.290.)

(d) Impaneling Jury. (Reserved. See RCW 4.44.120.)

(e) Challenge.

(1) Kind and Number. (Reserved. See RCW 4.44.130.)

(2) Peremptory Challenges Defined. (Reserved. See RCW 4.44.140.)

(3) Challenges for Cause. (Reserved. See RCW 4.44.150.)

(4) General Causes of Challenge. (Reserved. See RCW 4.44.160.)

(5) Particular Causes of Challenge. (Reserved. See RCW 4.44.170.)

(6) Implied Bias Defined. (Reserved. See RCW 4.44.180.)

(7) Challenge for Actual Bias. (Reserved. See RCW 4.44.190.)

(8) Exemption Not Cause of Challenge. (Reserved.)

(9) Peremptory Challenges. (Reserved. See RCW 4.44.210.)

(10) Order of Taking Challenges. (Reserved. See RCW 4.44.220.)

(11) Objections to Challenges. (Reserved. See RCW 4.44.230.)

(12) Trial of Challenge. (Reserved. See RCW 4.44.240.)

(13) Challenge; Objection and Denial May Be Oral. (Reserved. See RCW 4.44.250.)

(f) Oath of Jurors. (Reserved. See RCW 4.44.260.)

(g) View of Premises by Jury. (Reserved. See RCW 4.44.270.)

(h) Admonitions to Jurors. (Reserved. See RCW 4.44.280.)

(i) Care of Jury While Deliberating.

(1) Generally. During trial and deliberations the jury may be allowed to separate unless good cause is shown, on the record, for sequestration of the jury.

(2) Communication Restricted. Unless the jury is allowed to separate, the jurors shall be kept together under the charge of one or more officers until they agree upon their verdict or are discharged by the court. The officer shall keep the jurors separate from other persons and shall not allow any communication which may affect the case to be made to the jurors, nor make any himself, unless by order of the court, except to ask the jurors if they have agreed upon their verdict. The officer shall not, before the verdict is rendered, communicate to any person the state of the jurors' deliberations or their verdict.

(3) Motions. Any motions or proceedings concerning the separation or sequestration of the jury shall be made out of the presence of the jury.

(j) Note Taking by Jurors. In all cases, jurors shall be allowed to take written notes regarding the evidence presented to them and keep these notes with them during their deliberation. The court may allow jurors to keep these notes with them in the jury room during recesses, in which case jurors may review their own notes but may not share or discuss the notes with other jurors until they begin deliberating. Such notes should be treated as confidential between the jurors making them and their fellow jurors, and shall be destroyed immediately after the verdict is rendered.

[Amended effective July 1, 1974; September 1, 1983; September 1, 1989; April 20, 1990; amended effective October 1, 2002.]

RULE 48
JURIES OF LESS THAN TWELVE

The parties may stipulate that the jury shall consist of any number less than 12 or that a verdict or a finding of a stated majority of the

jurors shall be taken as the verdict or finding of the jury.

RULE CR 49
VERDICTS

(-) General Verdict. A general verdict is that by which the jury pronounces generally upon all or any of the issues in favor of either the plaintiff or defendant.

(a) Special Verdict. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives his rights to a trial by jury of the issue so omitted unless before the jury retires he demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

(b) General Verdict Accompanied by Answer to Interrogatories. The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the appropriate judgment upon the verdict and answers shall be entered pursuant to rule 58. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered pursuant to rule 58 in accordance with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

(c) Discharge of Jury.

(1) Without Verdict. (Reserved. See RCW 4.44.330.)

(2) Effect of Discharge. (Reserved. See RCW 4.44.340.)

(d) Court Recess During Deliberation. (Reserved. See RCW 4.44.350.)

(e) Proceedings When Jurors Have Agreed. (Reserved. See RCW 4.44.360.)

(f) Manner of Giving Verdict. (Reserved. See RCW 4.44.370.)

(g) Ten Jurors in Civil Cases. (Reserved. See RCW 4.44.380.)

(h) Jury May Be Polled. (Reserved. See RCW 4.44.390.)

(i) Correction of Informal Verdict. (Reserved. See RCW 4.44.400.)

(j) Jury To Assess Amount of Recovery. (Reserved. See RCW 4.44.450.)

(k) Receiving Verdict and Discharging Jury. (Reserved. See RCW 4.44.460.)

(l) Any Juror Verdict. When a jury decides a verdict, any juror may vote on any of the questions posed. It is not necessary that the same ten jurors agree on every answer, as long as each answer is agreed to by any ten or more jurors.

[Adopted July 1, 1967; amended effective September 1, 2001.]]

RULE CR 50
JUDGMENT AS A MATTER OF LAW IN JURY TRIALS; ALTERNATIVE MOTION FOR NEW TRIAL; CONDITIONAL RULINGS

(a) Judgment as a Matter of Law.

(1) Nature and Effect of Motion. If, during a trial by jury, a party has been fully heard with respect to an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find or have found for that party with respect to that issue, the court may grant a motion for judgment as a matter of law against the party on any claim, counterclaim, cross claim, or third party claim that cannot under the controlling law be maintained without a favorable finding on that issue. Such a motion shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment. A motion for judgment as a matter of law which is not granted is not a waiver of trial by jury even though all parties to the action have moved for judgment as a matter of law.

(2) When Made. A motion for judgment as a matter of law may be made at any time before submission of the case to the jury.

(b) Renewing Motion for Judgment After Trial; Alternative Motion for New Trial. If, for any reason, the court does not grant a motion for judgment as a matter of law made at the close of all the evidence, the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. The movant may renew its request for judgment as a matter of law by filing a motion no later than 10 days after entry of judgment - and may alternatively request a new trial or join a motion for a new trial under rule 59. In ruling on a renewed motion, the court may:

(1) if a verdict was returned:

(A) allow the judgment to stand,
(B) order a new trial, or
(C) direct entry of judgment as a matter of law; or

(2) if no verdict was returned:
(A) order a new trial, or
(B) direct entry of judgment as a matter of law.

(c) Alternative Motions for Judgment as a Matter of Law or for a New Trial--Effect of Appeal. Whenever a motion for a judgment as a matter of law and, in the alternative, for a new trial shall be filed and submitted in any superior court in any civil cause tried before a jury, and such superior court shall enter an order granting such motion for judgment as a matter of law, such court shall at the same time, in the alternative, pass upon and decide in the same order such motion for a new trial; such ruling upon said motion for a new trial not to become effective unless and until the order granting the motion for judgment as a matter of law shall thereafter be reversed, vacated, or set aside in the manner provided by law. An appeal to the Supreme Court or Court of Appeals from a judgment granted on a motion for judgment as a matter of law shall, of itself, without the necessity of cross appeal, bring up for review the ruling of the trial court on the motion for a new trial; and the appellate court shall, if it reverses the judgment entered as a matter of law, review and determine the validity of the ruling on the motion for a new trial.

(d) Same: Denial of Motion for Judgment as a Matter of Law. If the motion for judgment as a matter of law is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling the party to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment. If the appellate court reverses the judgment, nothing in this rule precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

[Amended effective January 1, 1977; July 1, 1980; September 1, 1984; September 17, 1993; September 1, 2005.]

RULE CR 51
INSTRUCTIONS TO JURY AND DELIBERATION

(a) Proposed. Unless otherwise requested by the trial judge on timely notice to counsel, proposed instructions shall be submitted when the case is called for trial. Proposed instructions upon questions of law developed

by the evidence, which could not reasonably be anticipated, may be submitted at any time before the court has instructed the jury.

(b) Submission. Submission of proposed instructions shall be by delivering the original and three or more copies as required by the trial judge, by filing one copy with the clerk, identified as the party's proposed instructions, and by serving one copy upon each opposing counsel.

(c) Form. Each proposed instruction shall be typewritten or printed on a separate sheet of letter-size (8-1/2 by 11 inches) paper. Except for one copy of each, the instructions delivered to the trial court shall not be numbered or identified as to the proposing party. One copy delivered to the trial court, and the copy filed with the clerk, and copies served on each opposing counsel shall be numbered and identified as to proposing party, and may contain supporting annotations.

(d) Published Instructions.

(1) Request. Any instruction appearing in the Washington Pattern Instructions (WPI) may be requested by counsel who must submit the proper number of copies of the requested instruction, identified by number as in section (c) of this rule, in the form he wishes it read to the jury. If the instruction in WPI allows or provides for a choice of wording by the use of brackets or otherwise, the written requested instruction shall use the choice of wording which is being requested.

(2) Record on Review. Where the refusal to give a requested instruction is an asserted error on review, a copy of the requested instruction shall be placed in the record on review.

(3) Local Option. Any superior court may adopt a local rule to substitute for subsection (d)(1) and to allow instructions appearing in the Washington Pattern Instructions (WPI) to be requested by reference to the published number. If the instruction in WPI allows or provides for a choice of wording by the use of brackets or otherwise, the local rule must require that the written request which designates the number of the instruction shall also designate the choice of wording which is being requested.

(e) Disregarding Requests. The trial court may disregard any proposed instruction not submitted in accordance with this rule.

(f) Objections to Instruction. Before instructing the jury, the court shall supply counsel with copies of its proposed instructions which shall be numbered. Counsel shall then be afforded an opportunity in the absence of the jury to make objections to the giving of any instruction and to the refusal to give a requested instruction. The objector shall state distinctly the matter to which he objects and the grounds of his objection, specifying the number, paragraph or particular part of the instruction to be given or refused and to which objection is made.

(g) Instructing the Jury and Argument. After counsel have completed their objections and the court has made any modifications deemed appropriate, the court shall then provide each counsel with a copy of the instructions in their final form. The court shall then read the instructions to the jury. The plaintiff or party having the burden of proof may then address the jury upon the evidence, and the law as contained in the courts instructions; after which the adverse party may address the jury; followed by the rebuttal of the party first addressing the jury.

(h) Deliberation. After argument, the jury shall retire to consider its verdict. In addition to the written instructions given, the jury shall take with it all exhibits received in evidence, except depositions. Copies may be substituted for any parts of public records or private documents as ought not, in the opinion of the court, to be taken from the person having them in possession. Pleadings shall not go to the jury room.

(i) Questions from Jury During Deliberations. The jury shall be instructed that any question it wishes to ask the court about the instructions or evidence should be signed, dated and submitted in writing to the bailiff without any indication of the status of the jury's deliberations. The court shall notify the parties of the contents of the questions and provide them an opportunity to comment upon an appropriate response. Written questions from the jury, the court's response and any objections thereto shall be made a part of the record. The court shall respond to all questions from a deliberating jury in open court or in writing. In its discretion, the court may grant a jury's request to rehear or replay evidence, but should do so in a way that is least likely to be seen as a comment on the evidence, in a way that is not unfairly prejudicial and in a way that minimizes the possibility that jurors will give undue weight to such evidence. Any additional instruction upon any point of law shall be given in writing.

(j) Comments Upon Evidence. Judges shall not instruct with respect to matters of fact, nor comment thereon.

[Amended effective November 3, 1967; March 29, 1968; January 1, 1977; amended effective October 1, 2002.]

RULE CR 52
DECISIONS, FINDINGS AND CONCLUSIONS

(a) Requirements.

(1) Generally. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law. Judgment shall be entered pursuant to rule 58 and may be entered at the same time as the entry of the findings of fact and the conclusions of law.

(2) Specifically Required. Without in any way limiting the requirements of subsection (1), findings and conclusions are required:

(A) Temporary injunctions. In granting or refusing temporary injunctions.

(B) Domestic relations. In connection with all final decisions in adoption, custody, and divorce proceedings, whether heard ex parte or not. In all cases in which the court makes specific findings of physical or sexual abuse or exploitation of a child the court shall direct the court clerk to notify the state patrol of the findings pursuant to RCW 43.43.840.

(C) Other. In connection with any other decision where findings and conclusions are specifically required by statute, by another rule, or by a local rule of the superior court.

(3) Proposed. Requests for proposed findings of fact are not necessary for review.

(4) Form. If a written opinion or memorandum of decision is filed, it will be sufficient if formal findings of fact and conclusions of law are included.

(5) When Unnecessary. Findings of fact and conclusions of law are not necessary:

(A) Stipulation. Where all parties stipulate in writing that there will be no appeal.

(B) Decision on motions. On decisions of motions under rules 12 or 56 or any other motion, except as provided in rules 41(b)(3) and 55(b)(2).

(C) Temporary restraining orders. On the issuance of temporary restraining orders issued ex parte.

(b) Amendment of Findings. Upon motion of a party filed not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the court an objection to such findings or has made a motion to amend them or a motion for judgment.

(c) Presentation. Unless an emergency is shown to exist, or a party has failed to appear at a hearing or trial, the court shall not sign findings of fact or conclusions of law until the defeated party or parties have received 5 days' notice of the time and place of the submission, and have been served with copies of the proposed findings and conclusions. Persons who have failed to appear at a hearing or trial after notice, may, in the discretion of the trial court, be deemed to have waived their right to notice of presentation or previous review of the proposed findings and conclusions.

(d) Judgment Without Findings, etc. A judgment entered in a case tried to the court where findings are required, without findings of fact having been made, is subject to a motion to vacate within the time for the taking of an appeal. After vacation, the judgment shall not be reentered until findings are entered pursuant to this rule.

(e) Time Limit for Decision. (Reserved. See RCW 2.08.240.)

[Amended effective September 1, 1985; January 1, 1988; September 1, 2005.]

RULE 53
MASTERS

(RESERVED)

RULE 53.1
REFEREES

(a) Referees--Definition and Powers. (Reserved. See RCW 2.24.060.)
(b) Reference by Consent--Right to Jury Trial. (Reserved. See RCW 4.48.010.)
(c) Reference Without Consent. (Reserved. See RCW 4.48.020.)
(d) To Whom Reference May Be Ordered. (Reserved. See RCW 4.48.030.)
(e) Qualifications of Referees. (Reserved. See RCW 4.48.040.)
(f) Challenges to Referees. (Reserved. See RCW 4.48.050.)
(g) Trial Procedure--Powers of Referee. (Reserved. See RCW 4.48.060.)
(h) Referee's Report--Contents--Evidence, Filing of, Frivolous. (Reserved. See RCW 4.48.070.)
(i) Proceedings on Filing of Report. (Reserved. See RCW 4.48.080.)
(j) Judgment on Referees Report. (Reserved. See RCW 4.48.090.)
(k) Fees of Referees. (Reserved. See RCW 4.48.100.)

RULE 53.2
COURT COMMISSIONERS

(a) Appointment of Court Commissioners--Qualifications--Term of Office. (Reserved. See RCW 2.24.010.)
(b) Oath. (Reserved. See RCW 2.24.020.)
(c) Salary. (Reserved. See RCW 2.24.030.)
(d) Powers of Commissioners--Fees. (Reserved. See RCW 2.24.040.)
(e) Revision by Court. (Reserved. See RCW 2.24.050.)

RULE 53.3
APPOINTMENT OF MASTERS IN DISCOVERY MATTERS

(a) Appointment. The court in which any action is pending may appoint a special master either to preside at depositions or to adjudicate discovery disputes, or both. Such appointment may be made, for good cause shown, upon the request of any party in pending litigation or upon the court's own motion.

(b) Qualifications. The master shall be a lawyer admitted to practice in the state of Washington.

(c) Compensation. The compensation of the master shall be fixed by the court. Payment of the master's compensation shall be charged to such of the parties or paid out of such other available funds as the court shall direct, but in determining payment of compensation the court shall take into account the relative financial resources of the parties and such other factors as the court deems appropriate.

(d) Powers. The order of reference to the master may specify the duties of the master. It may direct that the master preside at depositions and make rulings on issues arising at the depositions. It may direct the master to hear and report to the court on unresolved discovery disputes and to make recommendations as to the resolution of such disputes, as to the imposition of terms or sanctions to be assessed against any party, and as to which party or parties shall bear the costs of the master. If directed by the court, the master shall prepare a report upon the matters submitted to the master by the order of reference. A party may request that the report be sealed pursuant to rule 26(c). The report with the rulings and recommendations of the master shall be reviewed by the court and may be adopted or revised as the court deems just.

CR 53.4
PROCEDURES FOR MANDATORY MEDIATION OF HEALTH CARE CLAIMS

(a) Scope of Rule. This rule governs the procedure in the superior court in all claims subject to mandatory mediation under RCW 7.70.100 and .110.

(b) Voluntary Mediation. The parties may establish a procedure for mediation that differs from this rule provided the procedure and the

selection of the mediator are agreed to in writing and signed by all parties.

(c) Deadlines. Except as otherwise ordered by the court for good cause shown, mediation under RCW 7.70.100 shall be commenced no later than 30 days before the trial date. Mediation under RCW 7.70.110 shall be commenced no later than 90 days after the selection of the mediator.

(d) Waiver of Mediation. Upon petition of any party that mediation is not appropriate, the court shall order or the mediator may determine that the claim is not appropriate for mediation.

(e) Appointment of Mediator. Subject to the conditions in this section, the court shall designate a mediator from the register described in section (g) upon the request of any party. Except upon stipulation in writing signed by all parties, the court shall not make this designation if the parties have agreed in writing to the selection of a mediator as contemplated by section (b) or have obtained a waiver of mediation under section (d). Except upon stipulation in writing signed by all parties, the court shall designate a mediator no sooner than 180 days before trial, or for mediation requested under RCW 7.70.100, no sooner than 180 days after the good faith request for mediation.

(f) Mediation Procedure. Promptly upon the designation of a mediator, the plaintiff shall arrange a conference call among the mediator and counsel for each party to discuss the procedural aspects of the mediation. Except to the extent the mediator directs otherwise, the following procedures shall apply:

(1) Copy of Pleadings. Upon selection of a mediator, the parties shall provide the mediator with copies of the relevant Pleadings.

(2) Notice of Time and Place. The mediator shall fix a time and place for the mediation conference, and all subsequent sessions, that is reasonably convenient for the parties and shall give them at least 14 days' written notice of the initial conference. In giving notice the mediator may use a form provided by the court.

(3) Memoranda. Each party shall provide the mediator with a confidential memorandum presenting in concise form its contentions relative to both liability and damages. This memorandum shall not exceed 10 pages in length. A copy of the memorandum shall be delivered to the mediator at least seven days before the mediation conference. Any party may deliver a copy of his or her memorandum to any other party. In addition, each party shall deliver to the mediator a confidential statement of its current offer or demand. Any party may deliver a copy of his or her statement to any other party.

(4) Attendance and Preparation Required. The attorney who is primarily responsible for each party's case shall personally attend the mediation conference and any subsequent sessions of that conference. The attorney for each party shall come prepared to discuss the following matters in detail and in good faith:

(A) All liability issues.

(B) All damage issues.

(C) The position, of his or her client relative to settlement.

(5) Attendance of Parties and Insurers. For purposes of this section, "insurer" shall include "self insurer." In addition to counsel, all parties and insurers shall attend the mediation in person. In the event a party defendant has provided his or her insurer with full authority to settle, such party's attendance is optional. The mediator may also, at his or her discretion, but only in exceptional cases, excuse a party or insurer from personally attending the mediation conference. Those excused from personal attendance by the mediator shall be on call by telephone during the conference.

(6) Failure to Attend. Willful or negligent failure to attend the mediation conference, or to comply with this rule or with the directions of the mediator, shall be reported to the court by the mediator in writing and may result in the imposition of such sanctions as the court may find appropriate.

(7) Proceedings Privileged. All proceedings of the mediation conference, including any statement made by any party, attorney or other participant, shall, in all respects, be privileged and not reported, recorded, placed in evidence, used for impeachment, made known to the trial court or jury, or construed for any purpose as an admission. No party shall be bound by anything done or said at the conference unless a settlement is reached, in which event the agreement upon a settlement shall be reduced to writing and shall be binding upon all parties to that

agreement.

(8) Mediator's Suggestions. The mediator shall have no obligation to make any written comments or recommendations, but may in his or her discretion provide the parties or their counsel with a confidential written settlement recommendation memorandum, but only if all parties agree. No copy of any such memorandum shall be filed with the clerk or made available, in whole or in part, directly or indirectly, either to the court or to the jury.

(9) Certification of Mediation. Not more than 10 days after the mediation concludes or the mediator determines that the claim is not appropriate for mediation, the parties shall certify in writing to the court the manner of mediation, if any, and compliance with the provisions of this rule.

(g) Register of Volunteer Mediators.

(1) Court to Maintain Register. The court shall establish and maintain a register of qualified attorneys who have volunteered to serve as mediators. The attorneys so registered shall be selected by the court from lists of qualified attorneys at law who are current members in good standing of the Washington State Bar Association.

(2) Qualifications. In order to qualify as a mediator, an attorney shall:

(A) Have been a member of the Washington State Bar Association for at least five years; and

(B) Have experience or expertise related to litigating actions arising from injury occurring as a result of health care; and

(C) Have 6 hours of CLE mediator training and acted as a mediator in at least 10 cases, three of which were medical malpractice; or

(D) Be a retired judge having experience or expertise related to actions arising from injury occurring as a result of health care and satisfy the requirements of (2)(C) herein.

131 Wn.2d 104-266, 1101, [Effective March 11, 1997; amended September 1, 2007.]

RULE 54
JUDGMENTS AND COSTS

(a) Definitions.

(1) Judgment. A judgment is the final determination of the rights of the parties in the action and includes any decree and order from which an appeal lies. A judgment shall be in writing and signed by the judge and filed forthwith as provided in rule 58.

(2) Order. Every direction of a court or judge, made or entered in writing, not included in a judgment, is denominated an order.

(b) Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross claim, or third party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination in the judgment, supported by written findings, that there is no just reason for delay and upon an express direction for the entry of judgment. The findings may be made at the time of entry of judgment or thereafter on the courts own motion or on motion of any party. In the absence of such findings, determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Demand for Judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

(d) Costs, Disbursements, Attorney's Fees, and Expenses.

(1) Costs and Disbursements. Costs and disbursements shall be fixed and allowed as provided in RCW 4.84 or by any other applicable statute. If the party to whom costs are awarded does not file a cost bill or an affidavit detailing disbursements within 10 days after the entry of the judgment, the clerk shall tax costs and disbursements pursuant to CR 78(e).

(2) Attorney's Fees and Expenses. Claims for attorney's fees and expenses, other than costs and disbursements, shall be made by motion unless the substantive law governing the action provides for the recovery of such fees and expenses as an element of damages to be proved at trial. Unless otherwise provided by statute or order of the court, the motion must be filed no later than 10 days after entry of judgment.

(e) Preparation of Order or Judgment. The attorney of record for the prevailing party shall prepare and present a proposed form of order or judgment not later than 15 days after the entry of the verdict or decision, or at any other time as the court may direct. Where the prevailing party is represented by an attorney of record, no order or judgment may be entered for the prevailing party unless presented or approved by the attorney of record. If both the prevailing party and his attorney of record fail to prepare and present the form of order or judgment within the prescribed time, any other party may do so, without the approval of the attorney of record of the prevailing party upon notice of presentation as provided in subsection (f)(2).

(f) Presentation.

(1) Time. Judgments may be presented at the same time as the findings of fact and conclusions of law under rule 52.

(2) Notice of Presentation. No order or judgment shall be signed or entered until opposing counsel have been given 5 days' notice of presentation and served with a copy of the proposed order or judgment unless:

(A) Emergency. An emergency is shown to exist.

(B) Approval. Opposing counsel has approved in writing the entry of the proposed order or judgment or waived notice of presentation.

(C) After verdict, etc. If presentation is made after entry of verdict or findings and while opposing counsel is in open court.

[Amended effective September 1, 1989; September 1, 2007.]

RULE 55
DEFAULT AND JUDGMENT

(a) Entry of Default.

(1) Motion. When a party against whom a judgment for affirmative relief is sought has failed to appear, plead, or otherwise defend as provided by these rules and that fact is made to appear by motion and affidavit, a motion for default may be made.

(2) Pleading After Default. Any party may respond to any pleading or otherwise defend at any time before a motion for default and supporting affidavit is filed, whether the party previously has appeared or not. If the party has appeared before the motion is filed, he may respond to the pleading or otherwise defend at any time before the hearing on the motion. If the party has not appeared before the motion is filed he may not respond to the pleading nor otherwise defend without leave of court. Any appearances for any purpose in the action shall be for all purposes under this rule 55.

(3) Notice. Any party who has appeared in the action for any purpose shall be served with a written notice of motion for default and the supporting affidavit at least 5 days before the hearing on the motion. Any party who has not appeared before the motion for default and supporting affidavit are filed is not entitled to a notice of the motion, except as provided in rule 55(f)(2)(A).

(4) Venue. A motion for default shall include a statement of the basis for venue in the action. A default shall not be entered if it clearly appears to the court from the papers on file that the action was brought in an improper county.

(b) Entry of Default Judgment. As limited in rule 54(c), judgment after default may be entered as follows, if proof of service is on file as required by subsection (b)(4):

(1) When Amount Certain. When the claim against a party, whose default has been entered under section (a), is for a sum certain or for a sum which

can by computation be made certain, the court upon motion and affidavit of the amount due shall enter judgment for that amount and costs against the party in default, if he is not an infant or incompetent person. No judgment by default shall be entered against an infant or incompetent person unless represented by a general guardian or guardian ad litem. Findings of fact and conclusions of law are not necessary under this subsection even though reasonable attorney fees are requested and allowed.

(2) When Amount Uncertain. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings as are deemed necessary or, when required by statute, shall have such matters resolved by a jury. Findings of fact and conclusions of law are required under this subsection.

(3) When Service by Publication or Mail. In an action where the service of the summons was by publication, or by mail under rule 4(d)(4), the plaintiff, upon the expiration of the time for answering, may, upon proof of service, apply for judgment. The court must thereupon require proof of the demand mentioned in the complaint, and must require the plaintiff or his agent to be examined on oath respecting any payments that have been made to the plaintiff, or to anyone for his use on account of such demand, and may render judgment for the amount which he is entitled to recover, or for such other relief as he may be entitled to.

(4) Costs and Proof of Service. Costs shall not be awarded and default judgment shall not be rendered unless proof of service is on file with the court.

(c) Setting Aside Default.

(1) Generally. For good cause shown and upon such terms as the court deems just, the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with rule 60(b).

(2) When Venue Is Improper. A default judgment entered in a county of improper venue is valid but will on motion be vacated for irregularity pursuant to rule 60(b)(1). A party who procures the entry of the judgment, shall in the vacation proceedings, be required to pay to the party seeking vacation the costs and reasonable attorney fees incurred by the party in seeking vacation if the party procuring the judgment could have determined the county of proper venue with reasonable diligence. This subsection does not apply if either (a) the parties stipulate in writing to venue after commencement of the action, or (b) the defendant has appeared, has been given written notice of the motion for an order of default, and does not object to venue before the entry of the default order.

(d) Plaintiffs, Counterclaimants, Cross Claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third party plaintiff, or a party who has pleaded a cross claim or counterclaim. In all cases a judgment by default is subject to the limitations of rule 54(c).

(e) Judgment Against State. (Reserved.)

(f) How Made After Elapse of Year.

(1) Notice. When more than 1 year has elapsed after service of summons with no appearance being made, the court shall not sign an order of default or enter a judgment until a notice of the time and place of the application for the order or judgment is served on the party in default, not less than 10 days prior to the entry. Proof by affidavit of the service of the notice shall be filed before entry of the judgment.

(2) Service. Service of notice of the time and place on the application for the order of default or default judgment shall be made as follows:

(A) by service upon the attorney of record;

(B) if there is no attorney of record, then by service upon the defendant by certified mail with return receipt of said service to be attached to the affidavit in support of the application; or

(C) by a personal service upon the defendant in the same manner provided for service of process.

(D) If service of notice cannot be made under subsections (A) and (C), the notice may be given by publication in a newspaper of general circulation in the county in which the action is pending for one publication, and by mailing a copy to the last known address of each defendant. Both the publication and mailing shall be done 10 days prior to the hearing.

RULE 56
SUMMARY JUDGMENT

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross claim, or to obtain a declaratory judgment may, after the expiration of the period within which the defendant is required to appear, or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross claim is asserted or a declaratory judgment is sought may move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) Motion and Proceedings. The motion and any supporting affidavits, memoranda of law, or other documentation shall be filed and served not later than 28 calendar days before the hearing. The adverse party may file and serve opposing affidavits, memoranda of law or other documentation not later than 11 calendar days before the hearing. The moving party may file and serve any rebuttal documents not later than 5 calendar days prior to the hearing. If the date for filing either the response or rebuttal falls on a Saturday, Sunday, or legal holiday, then it shall be filed and served not later than the next day nearer the hearing which is neither a Saturday, Sunday, or legal holiday. Summary judgment motions shall be heard more than 14 calendar days before the date set for trial unless leave of court is granted to allow otherwise. Confirmation of the hearing may be required by local rules. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion. If on motion under the rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action, the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot, for reasons stated, present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney fees, and any offending party or attorney may be adjudged guilty of contempt.

(h) Form of Order. The order granting or denying the motion for summary judgment shall designate the documents and other evidence called to the attention of the trial court before the order on summary judgment was entered.

RULE 57
DECLARATORY JUDGMENTS

The procedure for obtaining a declaratory judgment pursuant to the Uniform Declaratory Judgments Act, RCW 7.24, shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

RULE 58
ENTRY OF JUDGMENT

(a) When. Unless the court otherwise directs and subject to the provisions of rule 54(b), all judgments shall be entered immediately after they are signed by the judge.
(b) Effective Time. Judgments shall be deemed entered for all procedural purposes from the time of delivery to the clerk for filing, unless the judge earlier permits the judgment to be filed with him as authorized by rule 5(e).
(c) Notice of Entry. (Reserved. See rule 54(f).)
(d) (Reserved.)
(e) Judgment by Confession. (Reserved. See RCW 4.60.)
(f) Assignment of Judgment. (Reserved. See RCW 4.56.090.)
(g) Interest on Judgment. (Reserved. See RCW 4.56.110.)
(h) Satisfaction of Judgment. (Reserved. See RCW 4.56.100.)
(i) Lien of Judgment. (Reserved. See RCW 4.56.190.)
(j) Commencement of Lien on Real Estate. (Reserved. See RCW 4.56.200.)
(k) Cessation of Lien--Extension Prohibited. (Reserved. See RCW 4.56.210.)
(l) Revival of Judgments. (Reserved.)

RULE CR 59
NEW TRIAL, RECONSIDERATION, AND AMENDMENT OF JUDGMENTS

(a) Grounds for New Trial or Reconsideration. On the motion of the party aggrieved, a verdict may be vacated and a new trial granted to all or any of the parties, and on all issues, or on some of the issues when such issues are clearly and fairly separable and distinct, or any other decision or order may be vacated and reconsideration granted. Such motion may be granted for any one of the following causes materially affecting the substantial rights of such parties:

(1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial.

(2) Misconduct of prevailing party or jury; and whenever any one or more of the jurors shall have been induced to assent to any general or special verdict or to a finding on any question or questions submitted to the jury by the court, other and different from his own conclusions, and arrived at by a resort to the determination of chance or lot, such misconduct may be proved by the affidavits of one or more of the jurors;

(3) Accident or surprise which ordinary prudence could not have guarded against;

(4) Newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial;

(5) Damages so excessive or inadequate as unmistakably to indicate that the verdict must have been the result of passion or prejudice;

(6) Error in the assessment of the amount of recovery whether too large or too small, when the action is upon a contract, or for the injury or detention of property;

(7) That there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is contrary to law;

(8) Error in law occurring at the trial and objected to at the time by the party making the application; or

(9) That substantial justice has not been done.

(b) Time for Motion; Contents of Motion. A motion for a new trial or for reconsideration shall be filed not later than 10 days after the entry of the judgment, order, or other decision. The motion shall be noted at the time it is filed, to be heard or otherwise considered within 30 days after the entry of the judgment, order, or other decision, unless the court directs otherwise. A motion for a new trial or for reconsideration shall identify the specific reasons in fact and law as to each ground on which the motion is based.

(c) Time for Serving Affidavits. When a motion for new trial is based on affidavits, they shall be filed with the motion. The opposing party has 10 days after service to file opposing affidavits, but that period may be extended for up to 20 days, either by the court for good cause or by the parties' written stipulation. The court may permit reply affidavits.

(d) On Initiative of Court. Not later than 10 days after entry of judgment, the court on its own initiative may order a hearing on its proposed order for a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice

and opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. When granting a new trial on its own initiative or for a reason not stated in a motion, the court shall specify the grounds in its order.

(e) Hearing on Motion. When a motion for reconsideration or for a new trial is filed, the judge by whom it is to be heard may on the judge's own motion or on application determine:

(1) Time of Hearing. Whether the motion shall be heard before the entry of judgment;

(2) Consolidation of Hearings. Whether the motion shall be heard before or at the same time as the presentation of the findings and conclusions and/or judgment, and the hearing on any other pending motion; and/or

(3) Nature of Hearing. Whether the motion or motions and presentation shall be heard on oral argument or submitted on briefs, and if on briefs, shall fix the time within which the briefs shall be served and filed.

(f) Statement of Reasons. In all cases where the trial court grants a motion for a new trial, it shall, in the order granting the motion, state whether the order is based upon the record or upon facts and circumstances outside the record that cannot be made a part thereof. If the order is based upon the record, the court shall give definite reasons of law and facts for its order. If the order is based upon matters outside the record, the court shall state the facts and circumstances upon which it relied.

(g) Reopening Judgment. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(h) Motion To Alter or Amend Judgment. A motion to alter or amend the judgment shall be filed not later than 10 days after entry of the judgment.

(i) Alternative Motions, etc. Alternative motions for judgment as a matter of law and for a new trial may be made in accordance with rule 50(c).

(j) Limit on Motions. If a motion for reconsideration, or for a new trial, or for judgment as a matter of law, is made and heard before the entry of the judgment, no further motion may be made without leave of the court first obtained for good cause shown: (1) for a new trial, (2) pursuant to sections (g), (h), and (i) of this rule, or (3) under rule 52(b).

[Amended effective July 1, 1980; September 1, 1984; September 1, 1989; September 1, 2005.]

RULE 60
RELIEF FROM JUDGMENT OR ORDER

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RAP 7.2(e).

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;

(2) For erroneous proceedings against a minor or person of unsound mind, when the condition of such defendant does not appear in the record, nor the error in the proceedings;

(3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);

(4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(5) The judgment is void;

(6) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;

(7) If the defendant was served by publication, relief may be granted as prescribed in RCW 4.28.200;

(8) Death of one of the parties before the judgment in the action;

(9) Unavoidable casualty or misfortune preventing the party from prosecuting or defending;

(10) Error in judgment shown by a minor, within 12 months after arriving at full age; or

(11) Any other reason justifying relief from the operation of the

judgment.

The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken. If the party entitled to relief is a minor or a person of unsound mind, the motion shall be made within 1 year after the disability ceases. A motion under this section (b) does not affect the finality of the judgment or suspend its operation.

(c) Other Remedies. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding.

(d) Writs Abolished--Procedure. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

(e) Procedure on Vacation of Judgment.

(1) Motion. Application shall be made by motion filed in the cause stating the grounds upon which relief is asked, and supported by the affidavit of the applicant or his attorney setting forth a concise statement of the facts or errors upon which the motion is based, and if the moving party be a defendant, the facts constituting a defense to the action or proceeding.

(2) Notice. Upon the filing of the motion and affidavit, the court shall enter an order fixing the time and place of the hearing thereof and directing all parties to the action or proceeding who may be affected thereby to appear and show cause why the relief asked for should not be granted.

(3) Service. The motion, affidavit, and the order to show cause shall be served upon all parties affected in the same manner as in the case of summons in a civil action at such time before the date fixed for the hearing as the order shall provide; but in case such service cannot be made, the order shall be published in the manner and for such time as may be ordered by the court, and in such case a copy of the motion, affidavit, and order shall be mailed to such parties at their last known post office address and a copy thereof served upon the attorneys of record of such parties in such action or proceeding such time prior to the hearing as the court may direct.

(4) Statutes. Except as modified by this rule, RCW 4.72.010-.090 shall remain in full force and effect.

RULE 61
HARMLESS ERROR

(RESERVED)

RULE CR 62
STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

(a) Automatic Stays. Except as to a judgment of a district court filed with the superior court pursuant to RCW 4.56.200, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry. Upon the filing of a notice of appeal, enforcement of judgment is stayed until the expiration of 14 days after entry of judgment. Unless otherwise ordered by the trial court or appellate court, an interlocutory or final judgment in an action for an injunction or in a receivership action, shall not be stayed during the period after its entry and until appellate review is accepted or during the pendency of appellate review.

(b) Stay on Motion for New Trial or for Judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to rule 59, or of a motion for relief from a judgment or order made pursuant to rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to rule 52(b).

(f) Other Stays. This rule does not limit the right of a party to a stay otherwise provided by statute or rule.

(h) Multiple Claims or Multiple Parties. When a court has ordered a final judgment under the conditions stated in rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

[Amended effective July 1, 1976; January 1, 1977; September 1, 1990; September 1, 2005.]

RULE 63
JUDGES

(a) Powers. See rule 77.
(b) Disability of a Judge. If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the court under these rules after a verdict is returned or findings of fact and conclusions of law are filed, then any other judge regularly sitting in or assigned to the court in which the action was tried may perform those duties; but if such other judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

RULE 64
SEIZURE OF PERSON OR PROPERTY

At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law existing at the time the remedy is sought. The remedies thus available include arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies, however designated and regardless of whether the remedy is ancillary to an action or must be obtained by an independent action.

RULE 65
INJUNCTIONS

(a) Preliminary Injunction.
(1) Notice. No preliminary injunction shall be issued without notice to the adverse party.
(2) Consolidation of Hearing With Trial on Merits. Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This subsection shall be so construed and applied as to save to the parties any rights they may have to trial by jury.
(b) Temporary Restraining Order; Notice; Hearing; Duration. A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and (2) the applicants attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his claim that notice should not be required. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 14 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the court shall dissolve the temporary restraining order. On 2 days' notice to the party who obtained the temporary restraining order

without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) Security. Except as otherwise provided by statute, no restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States or of an officer or agency thereof. Pursuant to RCW 4.92.080 no security shall be required of the State of Washington, municipal corporations or political subdivisions of the State of Washington. The provisions of rule 65.1 apply to a surety upon a bond or undertaking under this rule.

(d) Form and Scope. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

(e) Statutes. These rules are intended to supplement and not to modify any statute prescribing the basis for obtaining injunctive relief. These rules shall prevail over statutes if there are procedural conflicts.

RULE 65.1
SECURITY--PROCEEDINGS AGAINST SURETIES

Whenever these rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known.

RULE CR 66
RECEIVERSHIP PROCEEDINGS

[RESERVED. See RCW ch 7.60.]

[Adopted effective July 1, 1967; amended effective September 1, 2006.]

RULE 67
DEPOSIT IN COURT

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing, whether or not that party claims all or any part of the sum or thing. The party making the deposit shall serve the order permitting deposit on the clerk of the court. Money paid into court under this rule shall be deposited and withdrawn in accordance with the provisions of RCW 4.44.480 through 4.44.500 or any like statute or rule.

RULE 68
OFFER OF JUDGMENT

At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to

allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the court shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

RULE 69
EXECUTION

(a) Procedure. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the State as authorized in RCW 6.13, 6.15, 6.17, 6.19, 6.21, 6.23, 6.32, 6.36, and any other applicable statutes.

(b) Supplemental Proceedings. In aid of the judgment or execution, the judgment creditor or his successor in interest when that interest appears of record, may examine any person, including the judgment debtor, in the manner provided in these rules for taking depositions or in the manner provided by RCW 6.32.

RULE 70
JUDGMENT FOR SPECIFIC ACTS; VESTING TITLE

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the state, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the clerk.

CR 70.1
APPEARANCE BY ATTORNEY

(a) Notice of Appearance. An attorney admitted to practice in this state may appear for a party by serving a notice of appearance.

(b) Notice of Limited Appearance. If specifically so stated in a notice of limited appearance filed and served prior to or simultaneous with the proceeding, an attorney’s role may be limited to one or more individual proceedings in the action. Service on an attorney who has made a limited appearance for a party shall be valid (to the extent permitted by statute and rule 5(b)) only in connection with the specific proceedings for which the attorney has appeared, including any hearing or trial at which the attorney appeared and any subsequent motions for presentation of orders. At the conclusion of such proceedings the attorney’s role terminates without the necessity of leave of court, upon the attorney filing notice of completion of limited appearance which notice shall include the client information

required by rule 71(c)(1).

[Effective October 29, 2002.]

RULE 71
WITHDRAWAL BY ATTORNEY

(a) Withdrawal by Attorney. Service on an attorney who has appeared for a party in a civil proceeding shall be valid to the extent permitted by statute and rule 5(b) only until the attorney has withdrawn in the manner provided in sections (b), (c), and (d). Nothing in this rule defines the circumstances under which a withdrawal might be denied by the court.

(b) Withdrawal by Order. A court appointed attorney may not withdraw without an order of the court. The client of the withdrawing attorney must be given notice of the motion to withdraw and the date and place the motion will be heard.

(c) Withdrawal by Notice. Except as provided in sections (b) and (d), an attorney may withdraw by notice in the manner provided in this section.

(1) Notice of Intent To Withdraw. The attorney shall file and serve a Notice of Intent To Withdraw on all other parties in the proceeding. The notice shall specify a date when the attorney intends to withdraw, which date shall be at least 10 days after the service of the Notice of Intent To Withdraw. The notice shall include a statement that the withdrawal shall be effective without order of court unless an objection to the withdrawal is served upon the withdrawing attorney prior to the date set forth in the notice. If notice is given before trial, the notice shall include the date set for trial. The notice shall include the names and last known addresses of the persons represented by the withdrawing attorney, unless disclosure of the address would violate the Rules of Professional Conduct, in which case the address may be omitted. If the address is omitted, the notice must contain a statement that after the attorney withdraws, and so long as the address of the withdrawing attorney's client remains undisclosed and no new attorney is substituted, the client may be served by leaving papers with the clerk of the court pursuant to rule 5(b)(1).

(2) Service on Client. Prior to service on other parties, the Notice of Intent To Withdraw shall be served on the persons represented by the withdrawing attorney or sent to them by certified mail, postage prepaid, to their last known mailing addresses. Proof of service or mailing shall be filed, except that the address of the withdrawing attorney's client may be omitted under circumstances defined by subsection (c)(1) of this rule.

(3) Withdrawal Without Objection. The withdrawal shall be effective, without order of court and without the service and filing of any additional papers, on the date designated in the Notice of Intent To Withdraw, unless a written objection to the withdrawal is served by a party on the withdrawing attorney prior to the date specified as the day of withdrawal in the Notice of Intent To Withdraw.

(4) Effect of Objection. If a timely written objection is served, withdrawal may be obtained only by order of the court.

(d) Withdrawal and Substitution. Except as provided in section (b), an attorney may withdraw if a new attorney is substituted by filing and serving a Notice of Withdrawal and Substitution. The notice shall include a statement of the date on which the withdrawal and substitution are effective and shall include the name, address, Washington State Bar Association membership number, and signature of the withdrawing attorney and the substituted attorney. If an attorney changes firms or offices, but another attorney in the previous firm or office will become counsel of record, a Notice of Withdrawal and Substitution shall nevertheless be filed.

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9. APPEALS
(RULES 72-76)

(RESERVED)

RULE CR 77
SUPERIOR COURTS AND JUDICIAL OFFICERS

(a) Original Jurisdiction. (Reserved. See RCW 2.08.010.)

(b) Powers of Superior Courts.

(1) Powers of Court in Conduct of Judicial Proceedings. (Reserved. See RCW 2.28.010.)

(2) Punishment for Contempt. (Reserved. See RCW 2.28.020.)

(3) Implied Powers. (Reserved. See RCW 2.28.150.)

(c) Powers of Judicial Officers.

(1) Judges Distinguished From Court. (Reserved. See RCW 2.28.050.)

(2) Judicial Officers Defined--When Disqualified. (Reserved. See RCW 2.28.030.)

(3) Powers of Judicial Officers. (Reserved. See RCW 2.28.060.)

(4) Judicial Officer May Punish for Contempt. (Reserved. See RCW 2.28.070.)

(5) Powers of Judges of Supreme and Superior Courts. (Reserved. See RCW 2.28.080.)

(6) Powers of Inferior Judicial Officers. (Reserved. See RCW 2.28.090.)

(7) Powers of Judge in Counties of His District. (Reserved. See RCW 2.08.190.)

(8) Visiting Judges.

(A) Assignments.

(i) Visiting judges at direction of Governor. (Reserved. See RCW 2.08.140.)

(ii) Visiting judges at request of judge or judges. (Reserved. See RCW 2.08.140 and 2.08.150.)

(iii) Court administrator--make recommendations. (Reserved. See RCW 2.56.030(3).)

(iv) Duty of judges to comply with Chief Justices direction. (Reserved. See RCW 2.56.040.)

(B) Powers. Whenever a visiting judge has heard or tried any case or matter and has departed from the county, he may require the argument on any posttrial motion to be submitted to him on briefs at such place within the state as he may designate and he may sign findings of fact, conclusions of law, judgments and posttrial orders anywhere within the state. See also RCW 2.08.140 and 2.08.150.

(9) Judges Pro Tempore. (Reserved. See RCW 2.08.180.)

(10) Change of Judge. (Reserved. See RCW 4.12.040 and 4.12.050.)

(11) Court May Fix Amount of Bond in Civil Actions. (Reserved. See RCW 4.44.470.)

(d) Superior Courts Always Open. The superior courts are courts of record, and shall be always open, except on nonjudicial days.

(e) No Court on Legal Holidays--Exceptions. (Reserved. See RCW 2.28.100.)

(f) Sessions. The superior court shall hold regular and special sessions at the county seats of the several counties at such times as the judges may determine and at such other places within the county as are designated by the judge or judges thereof with the approval of the chief justice of the supreme court of this state and of the governing body of the county. Special sessions, i.e., mental illness hearings, juvenile hearings, and proceedings which are authorized to be held before a court commissioner may be held at such times and places as the judges may authorize.

(g) Adjournments.

(1) Power. (Reserved. See RCW 2.28.120.)

(2) Automatic. (Reserved. See RCW 2.28.110.)

(3) Effect. (Reserved. See RCW 2.08.040.)

(h) (Reserved.)

(i) Sessions Where More Than One Judge Sits--Effect of Decrees, Orders, etc. (Reserved. See RCW 2.08.160.)

(j) Trials and Hearings; Orders in Chambers. Except as otherwise authorized by these rules or by statute, all trials upon the merits shall be conducted in open court and so far as convenient in a regular courtroom. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the clerk or other court officials and at any place either within or without the county; but no hearing, other than one ex parte, shall be conducted outside the county in which the cause or proceedings are pending without the consent of all parties affected thereby.

(k) Motion Day--Local Rules. Unless local conditions make it impracticable, the superior court in each county shall establish regular times and places, at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of; but the judge at any time or place and on such

notice, if any, as he considers reasonable may make orders for the advancement, conduct, and hearing of actions.

(l) Submission on Briefs. To expedite its business, the court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

(m) Stipulations. See rule 16.

(n) Seal of Court. (Reserved. See RCW 2.08.050.)

[Amended effective May 24, 1978; September 1, 1992; September 1, 2003.]

RULE 78
CLERKS

(a) Powers and Duties of Clerks. (Reserved. See RCW 2.32.050.)

(b) Office Hours. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays.

(c) Orders by Clerk. All motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk; but his action may be suspended or altered or rescinded by the court upon cause shown.

(d) Filing of Depositions. Upon the filing of a deposition transcript in any case pursuant to rule 5(i), the clerk shall forthwith endorse the date of the filing upon the envelope, and shall enter the same upon the case history docket.

(e) Entry of Judgments and Costs. The clerk shall enter judgment or decree pursuant to the provisions of rule 58 and the same shall then be entered for the sum found due or the relief awarded, with costs and disbursements, if any, to be taxed. Entry of judgment shall not be delayed for the taxing of costs. If no cost bill is filed by the party to whom costs are awarded within 10 days after the entry of the judgment or decree, the clerk shall proceed to tax the following costs and disbursements, namely:

(1) The statutory attorney fee;
(2) The clerk's fee; and
(3) The sheriff's fee.

If a cost bill is filed, the clerk shall enter as the amount to be recovered the amount claimed in such cost bill, and no motion to retax costs shall be considered unless the same be filed within 6 days after the filing of the cost bill.

For purposes of this subsection (e), "cost bill" also includes affidavit detailing disbursements.

(f) Bonds. The clerk shall at once upon the filing of a bond (except bond for costs) enter the same at large upon the journal. The clerk shall endorse upon every affidavit or undertaking filed to procure a writ of attachment, the day, hour, and minute of filing thereof.

[Amended effective September 1, 1988; September 1, 2007.]

RULE 79
BOOKS AND RECORDS KEPT BY THE CLERK

(a) Civil Docket. (Reserved.)
(b) Civil Judgments and Orders.
(1) Generally. (Reserved.)
(2) Entry of Judgment in Journal. (Reserved. See RCW 4.64.030.)
(3) Judgment Roll. (Reserved. See RCW 4.64.040.)
(4) Identification of Judgment Roll. (Reserved. See RCW 4.64.050.)
(5) Execution Docket. (Reserved. See RCW 4.64.060.)
(6) Entry of Verdict in Execution Docket. (Reserved. See RCW 4.64.020.)
(7) Entries in Execution Docket. (Reserved. See RCW 4.64.080.)
(8) Transcript of Justice Docket. (Reserved. See RCW 4.64.110.)
(9) Entry of Abstract or Transcript of Judgment. (Reserved. See RCW 4.64.120.)
(10) Abstract of Judgment. (Reserved. See RCW 4.64.090.)
(11) Abstract of Verdict--Cessation of Lien. (Reserved. See RCW

4.64.100.)
(c) Indices; Calendars. (Reserved.)
(d) Other Books and Records of Clerk. (Reserved.)
(e) Destruction of Records. (Reserved. See RCW 36.23.065 and GR 15.)
(f) List of Pending Decisions. The clerk of each county shall maintain a permanent, public record showing each case submitted to a judge and not yet decided. Said list shall clearly show what, if any, further action is to be taken by any party or counsel and when said action should be taken. Said list shall be called to the attention of every judge in said county on the first Monday of each calendar month. Any case which shall have been submitted to any visiting judge and not yet decided shall be called to the attention of such visiting judge by mail on said dates.

RULE 80
COURT REPORTERS

(a) (Reserved.)
(b) Electronic Recording. In any civil or criminal proceedings, electronic or mechanical recording devices approved by the Administrator for the Courts may be used to record oral testimony and other oral proceedings in lieu of or supplementary to causing shorthand notes thereof to be taken. In all matters the use of such devices shall rest within the sole discretion of the court.
(c) Recording Proceedings in Superior Court by Means of Videotape. All superior courts that elect to use video equipment to record proceedings shall comply with courtroom procedures published by the Office of the Administrator for the Courts.

RULE 81
APPLICABILITY IN GENERAL

(a) To What Proceedings Applicable. Except where inconsistent with rules or statutes applicable to special proceedings, these rules shall govern all civil proceedings. Where statutes relating to special proceedings provide for procedure under former statutes applicable generally to civil actions, the procedure shall be governed by these rules.
(b) Conflicting Statutes and Rules. Subject to the provisions of section (a) of this rule, these rules supersede all procedural statutes and other rules that may be in conflict.

RULE 82
VENUE

(a) Nonresident. An action against a nonresident of this state may be brought:
(1) In any county in which service of process may be had; or
(2) In a county in which the acts, or any of them, were done which gave rise to service under RCW 4.28.180 and 4.28.185; or
(3) In the county in which the plaintiffs, or any of them, reside.
(b) Request--Waiver. If an action is brought in the wrong county, the action may nevertheless be tried therein unless the defendant, pursuant to the provisions of rule 12, requests that the trial be held in the proper county and files an affidavit of merits.
(c) Default. See rule 55(c). No order of default shall be entered if it clearly appears to the court from the papers on file that the action was brought in an improper county, except as provided in rule 55(c)(2)(a) or (b).
(d) Change of Venue--Fees. Any fees or costs required to be paid by a party pursuant to RCW 4.12.090 shall be to the clerk of the county from which the case is being transferred by check or money order made payable to the clerk of the county to which the case is being transferred.

RULE 82 .5
TRIBAL COURT JURISDICTION

(a) Indian Tribal Court; Exclusive Jurisdiction. Where an action is brought in the superior court of any county of this state, and where, under the Laws of the United States, exclusive jurisdiction over the matter in controversy has been granted or reserved to an Indian tribal court of a federally recognized Indian tribe, the superior court shall, upon motion of a party or upon its own motion, dismiss such action pursuant to CR 12(b)(1), unless transfer is required under federal law.

(b) Indian Tribal Court; Concurrent Jurisdiction. Where an action is brought in the superior court of any county of this state, and where, under the Laws of the United States, concurrent jurisdiction over the matter in controversy has been granted or reserved to an Indian tribal court of a federally recognized Indian tribe, the superior court may, if the interests of justice require, cause such action to be transferred to the appropriate Indian tribal court. In making such determination, the superior court shall consider, among other things, the nature of the action, the interests and identities of the parties, the convenience of the parties and witnesses, whether state or tribal law will apply to the matter in controversy, and the remedy available in such Indian tribal court.

(c) Enforcement of Indian Tribal Court Orders, Judgments or Decrees. The superior courts of the State of Washington shall recognize, implement and enforce the orders, judgments and decrees of Indian tribal courts in matters in which either the exclusive or concurrent jurisdiction has been granted or reserved to an Indian tribal court of a federally recognized tribe under the Laws of the United States, unless the superior court finds the tribal court that rendered the order, judgment or decree (1) lacked jurisdiction over a party or the subject matter, (2) denied due process as provided by the Indian Civil Rights Act of 1968, or (3) does not reciprocally provide for recognition and implementation of orders, judgments and decrees of the superior courts of the State of Washington.

GENERAL CIVIL RULE 83
LOCAL RULES OF COURT

(a) Adoption. Each court by action of a majority of the judges may from time to time make and amend local rules governing its practice not inconsistent with these rules. Local rules shall be numbered and indexed in a manner consistent with the numbering and index system for the Civil Rules.

(b) Filing with the Administrator for the Courts. Local rules and amendments become effective only after they are filed with the state Administrator for the Courts in accordance with GR 7.

RULE 84
FORMS

(RESERVED)

RULE 85
TITLE OF RULES

These rules shall be known and cited as the Superior Court Civil Rules. CR is the official abbreviation.

RULE 86
EFFECTIVE DATES

Generally--Pending Actions. These rules and amendments promulgated pursuant to authority granted to the Supreme Court shall govern all proceedings in actions after they take effect, and also all further proceedings in actions pending on their effective dates, except to the extent that in the opinion of the superior court, expressed by its order, the application of rules in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event the procedure existing at the time the action was brought applies.

SUPERIOR COURT
MANDATORY ARBITRATION RULES (MAR)

TABLE OF RULES

RULE 1.1
APPLICATION OF RULES

These arbitration rules apply to mandatory arbitration of civil actions under RCW 7.06. These rules do not apply to arbitration by private agreement or to arbitration under other statutes, except by stipulation under rule 8.1.

RULE 1.2
MATTERS SUBJECT TO ARBITRATION

A civil action, other than an appeal from a court of limited jurisdiction, is subject to arbitration under these rules if the action is

at issue in a superior court in a county which has authorized mandatory arbitration under RCW 7.06, if (1) the action is subject to mandatory arbitration as provided in RCW 7.06, (2) all parties, for purposes of arbitration only, waive claims in excess of the amount authorized by RCW 7.06, exclusive of attorney fees, interest and costs, or (3) the parties have stipulated to arbitration pursuant to rule 8.1.

RULE 1.3
RELATIONSHIP TO SUPERIOR COURT JURISDICTION
AND OTHER RULES

(a) Superior Court Jurisdiction. A case filed in the superior court remains under the jurisdiction of the superior court in all stages of the proceeding, including arbitration. Except for the authority expressly given to the arbitrator by these rules, all issues shall be determined by the court.

(b) Which Rules Apply.

(1) Generally. Until a case is assigned to the arbitrator under rule 2.3, the rules of civil procedure apply. After a case is assigned to the arbitrator, these arbitration rules apply except where an arbitration rule states that a civil rule applies.

(2) Service. After a case is assigned to an arbitrator, all pleadings and other papers shall be served in accordance with CR 5 and filed with the arbitrator.

(3) Time. Time shall be computed in accordance with CR 6(a) and (e).

(4) Voluntary Dismissal. The arbitrator shall have the power to dismiss an action, under the same conditions and with the same effect as set forth in CR 41(a), at any time prior to the filing of an award.

RULE 2.1
TRANSFER TO ARBITRATION

The point at which a case is transferred to arbitration and the procedures for accomplishing the transfer to an arbitration calendar shall be established by local rule adopted in accordance with rule 8.2.

RULE 2.2
COURT MAY DETERMINE ARBITRABILITY

(a) Generally. The court may, on its own motion or on motion of a party, determine whether a case is actually subject to arbitration under RCW 7.06.020 and rule 1.2 and may accordingly order a case transferred to or from the arbitration calendar. Only in extraordinary circumstances after a case has been assigned to an arbitrator under rule 2.3 will the court order a case returned from the arbitration calendar to the trial calendar.

(b) Effect on Right To Appeal. If a party asserts a claim which disqualifies a case for arbitration but the court nevertheless orders a transfer to arbitration under section (a), any party is deemed aggrieved under rule 7.1 if the arbitrator awards less than the party's original claim.

RULE 2.3
ASSIGNMENT TO ARBITRATOR

(a) Generally. The parties may select an arbitrator by stipulation. If an arbitrator is not chosen by stipulation within 14 days after a case has been placed on the arbitration calendar, the court shall promptly select an arbitrator and notify the arbitrator and the parties of the assignment. The case is deemed assigned for purposes of rule 1.3 upon the final selection of the arbitrator under this rule.

(b) Communication With Potential Arbitrator Restricted. The restrictions on communication defined by rule 4.1 apply to communication with a person under consideration as a possible arbitrator in a case.

MAR 3.1
QUALIFICATIONS

Unless otherwise ordered or stipulated, an arbitrator must be a member of the Washington State Bar Association who has been admitted to the Bar for a minimum of 5 years, or who is a retired judge. The parties may stipulate to a nonlawyer arbitrator.

To qualify as an arbitrator, a person must sign and file an oath of office, either to serve in a particular case, or as a member of a panel of arbitrators. The court is authorized to remove an individual from a list of qualified arbitrators for good cause.

[Effective July 1, 1980. Amended effective September 1, 2008.]

RULE 3.2
AUTHORITY OF ARBITRATORS

An arbitrator has the authority to:
(1) Decide procedural issues arising before or during the arbitration hearing, except issues relating to the qualifications of an arbitrator;
(2) Invite, with reasonable notice, the parties to submit trial briefs;
(3) Examine any site or object relevant to the case;
(4) Issue a subpoena under rule 4.3;
(5) Administer oaths or affirmations to witnesses;
(6) Rule on the admissibility of evidence under rule 5.3;
(7) Determine the facts, decide the law, and make an award;
(8) Perform other acts as authorized by these rules or local rules adopted and filed under rule 8.2.
Motions for involuntary dismissal, motions to change or add parties to the case, and motions for summary judgment shall be decided by the court and not by the arbitrator.

RULE MAR 4.1
RESTRICTIONS ON COMMUNICATION BETWEEN ARBITRATOR AND PARTIES

No disclosure of any offers of settlement made by any party shall be made to the arbitrator prior to the announcement of the award. Neither counsel nor a party may communicate with the arbitrator regarding the merits of the case except in the presence of, or on reasonable notice to, all other parties.

[Effective July 1, 1980; amended effective September 1, 2001.]

RULE 4.2
DISCOVERY

After the assignment of a case to the arbitrator, a party may demand a specification of damages under RCW 4.28.360, may request from the arbitrator an examination under CR 35, may request admissions from a party under CR 36, and may take the deposition of another party, unless the arbitrator orders otherwise. No additional discovery shall be allowed, except as the parties may stipulate or as the arbitrator may order. The arbitrator will allow discovery only when reasonably necessary.

RULE 4.3
SUBPOENA

In accordance with CR 45, a lawyer of record or the arbitrator may

issue a subpoena for the attendance of a witness at the arbitration hearing or for the production of documentary evidence at the hearing. A subpoena for discovery purposes may be issued only with the permission of the arbitrator or by stipulation.

RULE 5.1
NOTICE OF HEARING

The arbitrator shall set the time, date, and place of the hearing and shall give reasonable notice of the hearing date to the parties. Except by stipulation or for good cause shown, the hearing shall be scheduled to take place not sooner than 21 days, nor later than 63 days, from the date of the assignment of the case to the arbitrator. The hearing shall take place in appropriate facilities provided or authorized by the court.

RULE 5.2
PREHEARING STATEMENT OF PROOF

At least 14 days prior to the date of the arbitration hearing, each party shall file with the arbitrator and serve upon all other parties a statement containing a list of witnesses whom the party intends to call at the arbitration hearing and a list of exhibits and documentary evidence, including but not limited to evidence authorized under rule 5.3(d). The statement shall contain a brief description of the matters about which each witness will be called to testify, and whether that testimony is anticipated to be provided in writing, in person, or by telephone. Each party, upon request, shall make the exhibits and other documentary evidence available for inspection by other parties. A party failing to comply with this rule or failing to comply with a discovery order may not present at the hearing the witness, exhibit, or documentary evidence required to be disclosed or made available, except with the permission of the arbitrator.

RULE 5.3
CONDUCT OF HEARING--WITNESSES--RULES OF EVIDENCE

(a) Witnesses. The arbitrator shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the facts, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment. In the discretion of the arbitrator, a witness may testify by telephone. A witness shall be placed under oath or affirmation by the arbitrator prior to presenting testimony, a violation of which oath shall be deemed a contempt of court in addition to any other penalties that may be provided by law. The arbitrator may question a witness.

(b) Recording. The hearing may be recorded electronically or otherwise by any party or the arbitrator.

(c) Rules of Evidence, Generally. The extent to which the Rules of Evidence will be applied shall be determined in the exercise of discretion of the arbitrator. The Rules of Evidence, to the extent determined by the arbitrator to be applicable, should be liberally construed in order to promote justice. The parties should stipulate to the admission of evidence when there is no genuine issue as to its relevance or authenticity.

(d) Certain Documents Presumed Admissible. The documents listed below, if relevant, are presumed admissible at an arbitration hearing, but only if (1) the party offering the document serves on all parties a notice, accompanied by a copy of the document and the name, address and telephone number of its author or maker, at least 14 days prior to the hearing in accordance with MAR 5.2; and (2) the party offering the document similarly furnishes all other related documents from the same author or maker. This rule does not restrict argument or proof relating to the weight of the evidence admitted, nor does it restrict the arbitrator's authority to determine the weight of the evidence after hearing all of the evidence and the arguments of opposing parties. The documents presumed admissible under this rule are:

(1) A bill, report, chart, or record of a hospital, doctor, dentist, registered nurse, licensed practical nurse, physical therapist, psychologist or other health care provider, on a letterhead or billhead;

(2) A bill for drugs, medical appliances or other related expenses on a letterhead or billhead;

(3) A bill for, or an estimate of, property damage on a letterhead or billhead. In the case of an estimate, the party intending to offer the estimate shall forward with the notice to the adverse party a statement indicating whether or not the property was repaired, and if it was, whether the estimated repairs were made in full or in part, attaching a copy of the receipted bill showing the items of repair and the amount paid;

(4) A police, weather, wage loss, or traffic signal report, or standard United States government life expectancy table to the extent it is admissible under the Rules of Evidence, but without the need for formal proof of authentication or identification;

(5) A photograph, videotape, x-ray, drawing, map, blueprint or similar documentary evidence, to the extent it is admissible under the Rules of Evidence, but without the need for formal proof of authentication or identification;

(6) The written statement of any other witness, including the written report of an expert witness, and including a statement of opinion which the witness would be allowed to express if testifying in person, if it is made by affidavit or by declaration under penalty of perjury;

(7) A document not specifically covered by any of the foregoing provisions but having equivalent circumstantial guaranties of trustworthiness, the admission of which would serve the interests of justice.

(e) Opposing Party May Subpoena Author or Maker as Witness. Any other party may subpoena the author or maker of a document or videotape admissible under this rule, at that party's expense, and examine the author or maker as if under cross examination.

RULE 5.4
ABSENCE OF PARTY AT HEARING

The arbitration hearing may proceed, and an award may be made, in the absence of any party who after due notice fails to participate or to obtain a continuance. If a defendant is absent, the arbitrator shall require the plaintiff to submit the evidence required for the making of an award. In a case involving more than one defendant, the absence of a defendant does not preclude the arbitrator from assessing as part of the award damages against the defendant or defendants who are absent. The arbitrator, for good cause shown, may allow an absent party an opportunity to appear at a subsequent hearing before making an award. A party who fails to participate without good cause waives the right to a trial de novo.

RULE 6.1
FORM AND CONTENT OF AWARD

The award shall be in writing and signed by the arbitrator. The arbitrator shall determine all issues raised by the pleadings, including a determination of any damages. Findings of fact and conclusions of law are not required.

RULE 6.2
FILING OF AWARD

Filing and Service of Award. Within 14 days after the conclusion of the arbitration hearing, the arbitrator shall file the award with the clerk of the superior court, with proof of service of a copy on each party. On the arbitrators application in cases of unusual length or complexity, the arbitrator may apply for and the court may allow up to 14 additional days for the filing and service of the award. Late filing shall not invalidate the award. The arbitrator may file with the court and serve upon the parties an amended award to correct an obvious error made in stating the award if done within the time for filing an award or upon application to the superior court to amend.

RULE 6.3
JUDGMENT ON AWARD

Judgment. If within 20 days after the award is filed no party has sought a trial de novo under rule 7.1, the prevailing party on notice as required by CR 54(f) shall present to the court a judgment on the award of arbitration for entry as the final judgment. A judgment so entered is subject to all provisions of law relating to judgments in civil actions, but it is not subject to appellate review and it may not be attacked or set aside except by a motion to vacate under CR 60.

RULE 6.4
WITNESS FEES AND COSTS

Witness fees and other costs provided for by statute or court rule in superior court proceedings shall be payable upon entry of judgment in the same manner as if the hearing were held in court.

RULE MAR 7.1
REQUEST FOR TRIAL DE NOVO

(a) Service and Filing. Within 20 days after the arbitration award is filed with the clerk, any aggrieved party not having waived the right to appeal may serve and file with the clerk a written request for a trial de novo in the superior court along with proof that a copy has been served upon all other parties appearing in the case. The 20-day period within which to request a trial de novo may not be extended. The request for a trial de novo shall not refer to the amount of the award and shall be in substantially the form set forth below:

SUPERIOR COURT OF WASHINGTON
FOR (_____) COUNTY

_____,	)	No. _____
Plaintiff,	)	
v.	)	REQUEST FOR
_____,	)	TRIAL DE NOVO
Defendant.	)	

TO: The clerk of the court and all parties:

Please take notice that (name of aggrieved party) requests a trial de novo from the award filed ____(date)_____.

Dated: _____ _____
(Name of attorney
for aggrieved party)

(b) Calendar. When a trial de novo is requested as provided in section (a), the case shall be transferred from the arbitration calendar in accordance with rule 8.2 in a manner established by local rule.

[Amended effective September 1, 1989; September 1, 2001.]

RULE 7.2
PROCEDURE AFTER REQUEST FOR TRIAL DE NOVO

(a) Sealing. The clerk shall seal any award if a trial de novo is requested.
(b) No Reference to Arbitration; Use of Testimony.
(1) The trial de novo shall be conducted as though no arbitration proceeding had occurred. No reference shall be made to the arbitration award, in any pleading, brief, or other written or oral statement to the trial court or jury either before or during the trial, nor, in a jury trial, shall the jury be informed that there has been an arbitration proceeding.
(2) Testimony given during the arbitration proceeding is admissible in subsequent proceedings to the extent allowed by the Rules of Evidence, except that the testimony shall not be identified as having been given in an arbitration proceeding.
(c) Relief Sought. The relief sought at a trial de novo shall not be restricted by RCW 7.06, local arbitration rule, or any prior waiver or

stipulation made for purposes of arbitration.
(d) Arbitrator as Witness. The arbitrator shall not be called as a witness at the trial de novo.

RULE 7.3
COSTS AND ATTORNEY FEES

The court shall assess costs and reasonable attorney fees against a party who appeals the award and fails to improve the party's position on the trial de novo. The court may assess costs and reasonable attorney fees against a party who voluntarily withdraws a request for a trial de novo. "Costs" means those costs provided for by statute or court rule. Only those costs and reasonable attorney fees incurred after a request for a trial de novo is filed may be assessed under this rule.

RULE 8.1
STIPULATIONS

(a) Generally. No agreement or consent between parties or lawyers relating to the conduct of the arbitration proceedings, the purport of which is disputed, will be regarded by the arbitrator unless the agreement or consent is made at the arbitration hearing, or unless the agreement or consent is in writing and signed by the lawyers or parties denying the same.
(b) To Arbitrate Other Cases. The parties may stipulate to enter into arbitration under these rules in a civil matter that would not otherwise be subject to arbitration under rule 1.2. A case transferred to arbitration by stipulation is subject to the arbitration rules in their entirety, except as otherwise agreed under section (a).

RULE 8.2
LOCAL RULES

The arbitration rules may be supplemented by local superior court rules adopted and filed in accordance with CR 83.

RULE 8.3
EFFECTIVE DATE

These rules shall take effect on July 1, 1980, and shall apply to all cases in which trial has not commenced on the merits by July 1, 1980.

RULE 8.4
TITLE AND CITATION

These rules shall be known and cited as the Superior Court Mandatory Arbitration Rules. MAR is the official abbreviation.

RULE 8.5
STATUS OF COMMENTS

The comments to these rules have not been adopted by the Supreme Court. The comments are solely those of the Judicial Council.

EXPLANATION

Format. When adopting the format of the rule numbering and subdivision organization of the federal rules it was necessary to remove all miscellaneous rules applicable to special proceedings. This had been partially accomplished because many of these miscellaneous rules had been assigned rule numbers between 87 and 99. These rule numbers continue to be reserved for this purpose and all the miscellaneous rules relating to special proceedings, except criminal, are now renumbered in this series. Other than the addition of subheadings, no major revisions have been undertaken in the Special Proceedings Rules.

Statutes. No attempt has been made to cross-reference applicable statutes.

Abbreviations. These Superior Court Special Proceedings Rules may be cited as SPR.

RULE 90.04W
ATTACHMENTS--DUTIES OF THE SHERIFF

Immediately upon the receipt of a writ of attachment, the sheriff or other officer shall endorse thereon, in ink, the day, hour, and minute when the same first came into the officers hands. When there are several attachments against the same defendant, they shall be executed in the order in which they were received by the sheriff.

RULE 91.04W
GARNISHMENTS--SERVICE, OBJECTIONS, ETC.

(RESCINDED)

RULE 93.04W
DISPOSITION OF REPORTS--ADOPTIONS

In an adoption proceeding, any report prepared pursuant to RCW 26.33 shall be open to inspection by the adoptive parents and the attorney for the adoptive parents. Such report at the close of the entire proceeding shall be sealed in accordance with RCW 26.33.330.

RULE 98.08W
ESTATES--SETTLEMENT OF CLAIMS BY GUARDIAN, RECEIVER, OR PERSONAL REPRESENTATIVE

In all actions or proceedings in which a guardian, receiver, personal representative, or other person having charge of settlement of any estate, applies to the court for an order allowing a claim to be compromised and settled for less than its face value, the court shall appoint a day not less than 5 days after such application for hearing the same, unless for good cause shown less time should intervene, and direct the giving of such notice as may be deemed proper.

RULE 98.10W
ESTATES--RECEIVERSHIP--REPORTS

All reports of receivers which involve an accounting shall be filed at least 10 days before the hearing. On filing and presentation of such report the court will appoint a time for hearing the same, and will direct such notice to be given as will most likely advise all interested parties of such hearing.

RULE 98.12W
ESTATES GENERALLY--FEES

Before compensation shall be allowed to any personal representative, guardian, or attorney in connection with any probate matter or proceeding, or to any receiver or an attorney for a receiver, and before any agreement therefor shall be approved, the amount of compensation claimed shall be definitely and clearly set forth in the application therefor, and all parties interested in the matter shall be given notice of the amount claimed in such manner as shall be fixed by statute, or, in the absence of statute, as shall be directed by the court; unless such application be filed with or made a part of a report or final account of such personal representative, guardian, receiver, or attorney.

SPR RULE 98.16W
ESTATES--GUARDIANSHIP--SETTLEMENT
OF CLAIMS OF MINORS AND INCAPACITATED PERSONS

(a) Approval of Settlement Required. In every settlement of a claim, whether or not filed in court, involving the beneficial interest of an unemancipated minor or a person determined to be disabled or incapacitated under RCW 11.88, the court shall determine the adequacy of the proposed settlement on behalf of such affected person and reject or approve it. If a suit for recovery on behalf of the affected person has been previously maintained, then the petition shall be filed in that county, or if no such suit exists, then in the county where the affected person resides, unless either court orders otherwise.

(b) Petition. The petition for approval of settlement on behalf of the affected person shall contain, as a minimum and to the full extent known:

(1) the affected person's full name and date of birth;

(2) the general identification and relationship of others having claims or potential claims arising from the same matters and identity of their counsel;

(3) the description and amount of all liens, subrogation or reimbursement claims, fees, bills, costs or expenses connected with the affected person's claim;

(4) the description and amount of all liens, reimbursements, fees, costs or expenses requested to be paid from the settlement funds to be deposited with the court (or the maximum claimed for reimbursement if any item is being disputed or negotiated further), including a columnar listing of all amounts to be received, all amounts to be paid or the maximum claimed and concluding with the net amount of money or other property remaining for the affected person.

(c) Appointment, Role and Termination of the Settlement Guardian ad Litem; Exceptions to Appointment.

(1) Upon filing of the petition, the court shall appoint a Settlement Guardian ad Litem to assist the court in determining the adequacy of the proposed settlement. The Settlement Guardian ad Litem shall conduct an investigation and file a written report with the court with a recommendation regarding approval and final disposition within 45 days of appointment or such other time as the court may order. The court, if appropriate under existing law, may order that all or part of the report and contents shall be confidential or sealed. Upon filing of the report and appearing at hearings as may be required, the Settlement Guardian ad Litem is exonerated from further duties unless otherwise ordered by the court.

(2) The court may dispense with the appointment of the Settlement Guardian ad Litem if by written finding the court determines a guardian ad litem, a guardian, or limited guardian has been previously appointed or if the court affirmatively finds that the affected person is represented by independent counsel, so long as the guardian ad litem, guardian, limited guardian, or independent counsel has the qualifications which would be required for a Settlement Guardian ad Litem and neither has nor represents interests in conflict with those of the affected person which would not be

allowed for a Settlement guardian ad Litem. Independent counsel's fee interest in the claim, if allowed by the Rules of Professional Conduct, is not a disqualifying interest. If a Settlement Guardian ad Litem is not required, the independent counsel, guardian ad litem, guardian or limited guardian shall file the report.

(d) Qualifications of Settlement Guardian ad Litem. The Settlement Guardian ad Litem shall be an attorney with at least five years of pertinent legal experience and such other qualifications as the court may require. The Settlement Guardian ad Litem shall neither have nor represent any interest in conflict with the affected person, including but not limited to the conflicting interests of parents or others legally responsible for medical care of the affected person.

(e) Report of Settlement Guardian ad Litem. The report of the Settlement Guardian ad Litem or other person authorized above shall include a description, in depth appropriate to the magnitude of injuries and settlement, of at least:

(1) the background of the appointment and qualifications of the writer including any relationship with involved parents, guardians, insurers or attorneys;

(2) a description of the investigation conducted, the persons interviewed and the documents reviewed, if any;

(3) a description of the incident and the affected person's potential legal claims;

(4) a description of the affected person's injuries, general treatment, diagnosis and prognosis attaching a recent supporting medical report or office record;

(5) a discussion of the damages potentially recoverable including identification of all special damages;

(6) a discussion of the potential liability of all persons and entities;

(7) an identification of other insurance or collateral sources for payment of any bills or expenses;

(8) A discussion and recommendation regarding any lien, subrogation or reimbursement claims, including any suggested retention in an attorney's trust account of the full amount claimed until the final resolution of such claim;

(9) an identification of all other claims, specifically including any claims held by other family members;

(10) a discussion of any proposed apportionment of claim proceeds among family members or unrelated claimants, if any;

(11) a discussion and recommendation regarding the proposed settlement form, documents and amounts;

(12) a discussion and recommendation regarding the expenses and fees for which payment is requested;

(13) a discussion and recommendation regarding the requested disposition of net proceeds;

(14) a statement of time spent, expenditures made and the fees and costs requested by the Settlement Guardian ad Litem;

(15) a discussion and recommendation regarding the presence of the affected person and the Settlement Guardian ad Litem at any court hearings on the Petition;

(16) a statement as to whether the Petition has been submitted for approval in any other jurisdiction.

(f) Hearing. At the time the petition for approval of the settlement is heard, the allowance and taxation of all fees, costs, and other charges incident to the settlement shall be considered and disposed of by the court. The court by local rule or by specific direction, may require or waive the presence of the affected person or the Settlement guardian ad Litem.

(g) Attorney's Fees and Costs. Any attorney claiming fees, costs or other charges incident to representation of the affected person, from the claim proceeds or otherwise, shall file an affidavit or declaration under RCW 9A.72.085 in support thereof. Copies of any written fee agreements must be attached to the affidavit or declaration.

(h) Deposit in Court and Disbursements. Except for any structured portion of a settlement, the total judgment or total settlement shall be paid into the registry of the court, or as otherwise ordered by the court. All sums deductible therefrom, including costs, attorney's fees, hospital and medical expenses, and any other expense, shall be paid upon approval of the court.

(i) Form for Payment of Remaining Funds. Checks for funds payable to the affected person may be made out by the clerk jointly to the depository

bank, trust company, or insured financial institution and to the independent attorney for the affected person, guardian or limited guardian, or trustee, and deposit shall be made to the trust or into a blocked account for the affected person with provision that withdrawals cannot be made except as provided in the trust instrument or as ordered by the court. A deposit receipt to that effect must timely be filed with the court by the payee.

(j) Control and Orders for Remaining Funds. In calculating the amount remaining from a structured settlement, if the settlement required court approval only because the affected person was an unemancipated minor, then only the payments received and to be received before attaining majority age are counted. All orders directing funds to a blocked account should recite that the funds are payable upon further order of the court or to the affected person at his or her age of majority, which date should be specified. Upon approval of settlement and payment of all authorized fees, bills and expenses, the court shall order one of the following actions:

(1) $25,000 or Less. If the money or the value of other property remaining after deduction for all approved fees, bills and expenses is $25,000 or less, the court shall require that:

(A) the money be deposited in a bank or trust company or be invested in an account in an insured financial institution for the benefit of the affected person, subject to withdrawal only upon the order of the court as a part of the original proceeding; or

(B) the money or property be paid to a duly appointed and qualified guardian or limited guardian; or

(C) the money be placed in trust, subject to the conditions set forth in subsection (3).

(2) More than $25,000. If the money or the value of other property remaining after deduction for all approved fees, bills and expenses exceeds $25,000, the court in the order or judgment shall:

(A) if there is an existing or newly created guardian or limited guardian who approves, require that the money be deposited in a bank or trust company or be invested in an account in an insured financial institution for the benefit of the affected person, subject to withdrawal only upon the order of the court handling the guardianship or limited guardianship;

(B) if there is no guardian or limited guardian of the affected person or no approval under (A), the court in the order or judgment shall require that either a guardian or limited guardian be appointed, or

(C) the money or other property be placed in trust, subject to the conditions set forth in subsection (3).

(3) Conditions for Use of Trust. A trust established pursuant to this rule under subsection (1) or (2) must meet the following requirements:

(A) The selection of the trustee(s) and the terms of the trust shall be subject to the court's approval;

(B) No family member of the affected person, or other potential residual beneficiary of the trust, shall be approved by the court as a sole trustee;

(C) A bonded or insured fiduciary shall be designated as a sole trustee or as co-trustee with principal responsibility for financial management of the trust estate;

(D) The fiduciary shall prepare an annual statement of income, expenses, current assets, and fees charged; shall deliver the statement to any co-trustees, the beneficiary, and the beneficiary's personal representative; and shall present the statement for review and approval by the court having jurisdiction over the beneficiary;

(E) No family member or potential residual beneficiary who serves as a co-trustee shall exercise discretionary authority over individual expenditures from the trust that would bring direct or indirect benefit to that individual; and

(F) The administration of the trust shall be subject to the continuing jurisdiction of the appropriate court.

(k) Bond. Unless all funds are to be placed in a blocked account or court approved trust, sufficient bond shall be required for guardians and limited guardians to the extent required by guardianship law.

RULE 98.20W
ESTATES--GUARDIANSHIPS--AUTHORIZATION
OF EXPENDITURES

(RESCINDED)

Rules for Superior Court

Guardian ad Litem Rules (GALR)

Table of Rules

Rule

GUARDIAN AD LITEM RULE 1:
SCOPE AND DEFINITIONS

(a) Statement of Purpose and Scope of Rule. The purpose of these rules is to establish a minimum set of standards applicable to all superior court cases where the court appoints a guardian ad litem or any person to represent the best interest of a child, an alleged incapacitated person, or an adjudicated incapacitated person pursuant to Title 11, 13 or 26 RCW.

These rules shall also apply to guardians ad litem appointed pursuant to RCW 4.08.050 and RCW 4.08.060, if the appointment is under the procedures of Titles 11, 13 or 26 RCW.

These rules shall not be applicable to guardians ad litem

appointed pursuant to Special Proceedings Rule (SPR) 98.16W and chapter 11.96A RCW.

(b) Definitions. As used in this rule, the following terms have these meanings:

(1) Court. Court shall mean any superior court in the state of Washington and all divisions thereof.

(2) Guardian ad Litem. Guardian ad litem shall mean any person or program appointed in a Title 11, 13, or 26 RCW action under the Revised Code of Washington to represent the best interest of a child, an alleged incapacitated person, or an adjudicated incapacitated person. The term guardian ad litem shall not include an attorney appointed to represent a party.

(3) Judge. Judge shall mean a judicial officer of the superior court, including commissioners and judges pro tempore.

(4) Registry. Registry shall mean the list of people authorized by the court to serve as guardians ad litem or CASA programs authorized by RCW 26.12.175.

[Adopted effective November 27, 2001.]

GUARDIAN AD LITEM RULE 2:
GENERAL RESPONSIBILITIES OF GUARDIAN AD LITEM

Consistent with the responsibilities set forth in Titles 11,

13, and 26 of the Revised Code of Washington and other applicable statutes and rules of court, in every case in which a guardian ad litem is appointed, the guardian ad litem shall perform the responsibilities set forth below. For purposes of these rules, a guardian ad litem is any person who is appointed by the court to represent the best interest of the child(ren), an adjudicated incapacitated person, or an alleged incapacitated person or to assist the court in determining the best interest of the child(ren), an adjudicated incapacitated person, or an alleged incapacitated person, regardless of that person's title, except a person appointed pursuant to rule 6.

(a) Represent best interests. A guardian ad litem shall represent the best interests of the person for whom he or she is appointed. Representation of best interests may be inconsistent with the wishes of the person whose interest the guardian ad litem represents. The guardian ad litem shall not advocate on behalf of or advise any party so as to create in the mind of a reasonable person the appearance of representing that party as an attorney.

(b) Maintain independence. A guardian ad litem shall maintain independence, objectivity and the appearance of fairness in dealings with parties and professionals, both in and out of the courtroom.

(c) Professional conduct. A guardian ad litem shall maintain the ethical principles of the rules of conduct set forth in these rules and is subject to discipline under local rules established pursuant to rule 7 for violation.

(d) Remain qualified for the registry. Unless excepted by statute or court rule, a guardian ad litem shall satisfy all training requirements and continuing education requirements developed for Titles13 and 26 RCW guardians ad litem by the administrator of the courts and for Title 11 RCW guardians ad litem as required by statute and maintain qualifications to serve as guardian ad litem in every county where the guardian ad litem is listed on the registry for that county and in which the guardian ad litem serves and shall promptly advise each such court of any grounds for disqualification or unavailability to serve.

(e) Avoid conflicts of interests. A guardian ad litem shall avoid any actual or apparent conflict of interest or impropriety in the performance of guardian ad litem responsibilities. A guardian ad litem shall avoid self-dealing or association from which a guardian ad litem might directly or indirectly benefit, other than for compensation as guardian ad litem. A guardian ad litem shall take action immediately to resolve any potential conflict or impropriety. A guardian ad litem shall advise the court and the parties of action taken, resign from the matter, or seek court direction as may be necessary to resolve the conflict or impropriety. A guardian ad litem shall not accept or maintain appointment if the performance of the duties of guardian ad litem may be materially limited by the guardian ad litem’s responsibilities to another client or a third person, or by the guardian ad litem’s own interests.

(f) Treat parties with respect. A guardian ad litem is an officer of the court and as such shall at all times treat the parties with respect, courtesy, fairness and good faith.

(g) Become informed about case. A guardian ad litem shall make reasonable efforts to become informed about the facts of the case and to contact all parties. A guardian ad litem shall examine material information and sources of information, taking into account the positions of the parties.

(h) Make requests for evaluations to court. A guardian ad litem shall not require any evaluations or tests of the parties except as authorized by statute or court order issued following notice and opportunity to be heard.

(i) Timely inform the court of relevant information. A guardian ad litem shall file a written report with the court and the parties as required by law or court order or in any event not later than 10 days prior to a hearing for which a report is required. The report shall be accompanied by a written list of documents considered or called to the attention of the guardian ad litem and persons interviewed during the course of the investigation.

(j) Limit duties to those ordered by court. A guardian ad litem shall comply with the court’s instructions as set out in the order appointing a guardian ad litem, and shall not provide or require services beyond the scope of the court’s instruction unless by motion and on adequate notice to the parties, a guardian ad litem obtains additional instruction, clarification or expansion of the scope of such appointment.

(k) Inform individuals about role in case. A guardian ad litem shall identify himself or herself as a guardian ad litem when contacting individuals in the course of a particular case and inform individuals contacted in a particular case about the role of a guardian ad litem in the case at the earliest practicable time. A guardian ad litem shall advise information sources that the documents and information obtained may become part of court proceedings.

(l) Appear at hearings. The guardian ad litem shall be given notice of all hearings and proceedings. A guardian ad litem shall appear at any hearing for which the duties of a guardian ad litem or any issues substantially within a guardian ad litem's duties and scope of appointment are to be addressed. In Title 11 RCW proceedings , the guardian ad litem shall appear at all hearings unless excused by court order.

(m) Ex parte communication. A guardian ad litem shall not have ex parte communications concerning the case with the judge(s) and commissioner(s) involved in the matter except as permitted by court rule or by statute.

(n) Maintain privacy of parties. As an officer of the court, a guardian ad litem shall make no disclosures about the case or the investigation except in reports to the court or as necessary to perform the duties of a guardian ad litem. A guardian ad litem shall maintain the confidential nature of identifiers or addresses where there are allegations of domestic violence or risk to a party's or child's safety. The guardian ad litem may recommend that the court seal the report or a portion of the report of the guardian ad litem to preserve the privacy, confidentiality, or safety of the parties or the person for whom the guardian ad litem was appointed. The court may, upon application, and under such conditions as may be necessary to protect the witnesses from potential harm, order disclosure or discovery that addresses the need to challenge the truth of the information received from the confidential source.

(o) Perform duties in timely manner. A guardian ad litem shall perform responsibilities in a prompt and timely manner, and, if necessary, request timely court reviews and judicial intervention in writing with notice to parties or affected agencies.

(p) Maintain documentation. A guardian ad litem shall maintain documentation to substantiate recommendations and conclusions and shall keep records of actions taken by the guardian ad litem. Except as prohibited or protected by law, and consistent with rule 2(n), this information shall be made available for review on written request of a party or the court on request. Costs may be imposed for such requests.

(q) Keep records of time and expenses. A guardian ad litem shall keep accurate records of the time spent, services rendered, and expenses incurred in each case and file an itemized statement and accounting with the court and provide a copy to each party or other entity responsible for payment. The court shall make provisions for fees and expenses pursuant to statute in the Order Appointing Guardian ad Litem or in any subsequent order.

[Adopted effective November 27, 2001.]

GUARDIAN AD LITEM RULE 3:
ROLES AND RESPONSIBILITIES OF GUARDIAN AD LITEM IN TITLE 13 RCW JUVENILE COURT PROCEEDINGS

In addition to the roles and responsibilities enumerated in rule 2, a guardian ad litem in Title 13 RCW juvenile court proceedings shall have the following responsibilities:

(a) Role. Unless otherwise specified in the order of appointment, the roles and responsibilities of a guardian ad litem are those roles and responsibilities specified in RCW 13.34.105 and applicable court rules.

(b) Explore concurrent planning. A guardian ad litem shall explore concurrent planning and make a timely recommendation to the court for a permanent plan for the child.

[Adopted effective November 27, 2001.]

GUARDIAN AD LITEM RULE 4
AUTHORITY OF GUARDIAN AD LITEM

As an officer of the court, a guardian ad litem has only such authority conferred by the order of appointment. Consistent with the roles and responsibilities set forth in rules 2 and 3, and the grievance procedures set forth in rules 5 and 6, a guardian ad litem shall have the following authority:

(a) Access to party. Unless circumstances warrant otherwise, a guardian ad litem shall have access to the persons for whom a guardian ad litem is appointed and to all information relevant to the issues for which a guardian ad litem was appointed. The access of a guardian ad litem to the child or alleged incapacitated person and all relevant information shall not be unduly restricted by any person or agency. When the guardian ad litem seeks contact with a party who is represented by an attorney, the guardian ad litem shall notify the attorney in advance of such contact. The guardian ad litem's contact with the represented party shall be as permitted by the party's attorney, unless otherwise ordered by the court.

(b) Timely receipt of case documents. Until discharged by court order a guardian ad litem shall be timely furnished copies of all relevant pleadings, documents, and reports by the party which served or submitted them.

(c) Timely notification. A guardian ad litem shall be timely notified of all court hearings, administrative reviews, staffings, investigations, dispositions, and other proceedings concerning the case by the person or agency scheduling the proceeding.

(d) Notice of proposed agreements. A guardian ad litem shall be given notice of, and an opportunity to indicate his or her agreement or objection to any proposed agreed order of the parties governing issues substantially related to the duties of a guardian ad litem.

(e) Participate in all proceedings. Consistent with rule 2(l), a guardian ad litem shall participate in court hearings through submission of written and supplemental oral reports and as otherwise authorized by statute and court rule.

(f) Access to records. Except as limited by law or unless good cause is shown to the court, upon receiving a copy of the order appointing a guardian ad litem, any person or agency, including but not limited to any hospital, school, child care provider, organization, department of social and health services, doctor, health care provider, mental health provider, chemical health program, psychologist, psychiatrist, or law enforcement agency, shall permit a guardian ad litem to inspect and copy any and all records and interview personnel relating to the proceeding for which a guardian ad litem is appointed.

(g) Access to court files. Within the scope of appointment, a guardian ad litem shall have access to all superior court and all juvenile court files. Access to sealed or confidential files shall be by separate order. A guardian ad litem's report shall inform the court and parties if the report contains information from sealed or confidential files. The clerk of court shall provide certified copies of the order of appointment to a guardian ad litem upon request and without charge.

(h) Additional rights and powers under RCW 13.34 or RCW 26.26. In every case in which a guardian ad litem is a party to the case pursuant to RCW 13.34 or RCW 26.26, a guardian ad litem shall have the rights and powers set forth below. These rights and powers are subject to all applicable statutes and court rules.

(1) File documents and respond to discovery. A guardian ad litem shall have the right to file pleadings, motions, notices memoranda, briefs, and other documents, and may, subject to the trial court's discretion engage in and respond to discovery.

(2) Note motions and request hearings. A guardian ad litem shall have the right to note motions and request hearings before the court as appropriate to the best interests of the person(s) for whom a guardian ad litem was appointed.

(3) Introduce exhibits, examine witnesses, and appeal. A guardian ad litem shall have the right, subject to the trial court's discretion, to introduce exhibits, subpoena witnesses,

and conduct direct and cross examination of witnesses.

(4) Oral argument and submission of reports. A guardian ad litem shall have the right to fully participate in the proceedings through submission of written reports, and, may with the consent of the trial court present oral argument.

(i) Additional rights and powers in other cases. For good cause shown, a guardian ad litem may petition the court for additional authority as set forth in rule 2(j).

(j) Additional training requirements. The Administrative Office of the Courts shall amend the current guardian ad litem mandatory training so that Titles 13 and 26 RCW guardians ad litem are prepared to carry out the additional requirements of this rule.

[Adopted effective November 27, 2001.]

GUARDIAN AD LITEM RULE 5: APPOINTMENTS OF GUARDIAN AD LITEM

(a) Equitable distribution of workload. Each court shall promulgate local rules providing a system of appointing and reasonably compensating guardians ad litem which ensures an equitable distribution of the work load among the guardians ad litem on the registry.

(b) Procedure to address complaints. The local rules shall provide a procedure to timely address complaints made by any guardian ad litem regarding registry or appointment matters.

[Adopted effective November 27, 2001.]

GUARDIAN AD LITEM RULE 6: LIMITED APPOINTMENTS

There may be situations where the court wishes to appoint a person in addition to, or instead of, a guardian ad litem to fulfill very limited roles. This will help avoid conflict of interest situations for guardians ad litem serving in a case and will limit the time and expense spent on cases which do not require a guardian ad litem. A person appointed pursuant to this rule is strictly limited to the duties of the role below selected by the court. If the order of appointment does not specifically designate a limited appointment as listed below, the person appointed is presumed to be a guardian ad litem, subject to the Guardian ad Litem Rules. The court may make the following limited appointments:

(a) Mediator. The court may either appoint or refer to a person or agency whose role is to assist the parties in reaching an agreement about any or all contested issues in the case.

(b) Evaluator. The court may appoint or refer to a person or agency for evaluation and findings regarding a specific issue or issues including but not limited to mental health, substance abuse, issues of abuse or neglect, cultural factors, and sexual deviancy.

(c) Visitation supervisor. The court may appoint or refer to a person or agency to supervise visits and report findings to the court.

(d) Settlement of minors' claims. The court may appoint a person for the limited purpose described in Special Proceedings Rules (SPR) 98.16W.

(e) Other. Under exceptional circumstances, upon good cause shown, the court may make other limited appointments as it deems necessary.

[Adopted effective November 27, 2001.]

GUARDIAN AD LITEM RULE 7:
GRIEVANCE PROCEDURES

Each court shall promulgate rules that set out or refer to policies and procedures establishing and governing the filing, investigating, and adjudicating grievances made by or against guardians ad litem under Titles, 11, 13, and 26 RCW. The rules shall, at a minimum, comply with and address the following:

(a) Clear and concise. The rules shall be clear, and concise and easily understood by both attorneys and non-attorneys.

(b) Separate procedures. The rules shall establish separate procedures addressing grievances or complaints filed during the pendency of a case, and grievances or complaints filed subsequent to the conclusion of a case.

(c) Fair treatment of grievances. The rules shall establish procedures providing for fair treatment of grievances including appearance-of-fairness and conflict issues.

(d) CASA grievance procedures. Where applicable, local rules shall accommodate the grievance procedures of Court Appointed Special Advocate(s) (CASA) or other volunteer program(s).

(e) Confidentiality. The rules shall provide for confidentiality of complaints until merit has been found.

(f) Response to complaint. The rules shall provide a procedure for any guardian ad litem who is the subject of a complaint to respond to the complaint.

(g) Complaint resolution time standards. The rules shall include a time limit during which a complaint must be resolved. The limit shall not be longer than 25 days for complaints filed while a case is pending or 60 days for complaints filed subsequent to the conclusion of a case.

(h) Records of grievances. For its own reference purposes, the court shall maintain a record of grievances filed and of any sanctions issued pursuant to local court grievance procedure.

(i) Removal from registry. When a guardian ad litem is removed from a county's registry pursuant to the disposition of a grievance, the court of that county shall send notice of such removal to the Office of the Administrator of the Courts, who shall on a regular basis, but not less than biannually, forward the information to the superior courts of each county in the state of Washington.

(j) Implementation. Local court rules establishing a grievance procedure shall be filed in the manner provided in GR 7.

[Adopted effective November 27, 2001.

SUPERIOR COURT CRIMINAL RULES (CrR)

TABLE OF RULES

RULE 1.1
SCOPE

These rules govern the procedure in the courts of general jurisdiction of the State of Washington in all criminal proceedings and supersede all procedural statutes and rules that may be in conflict and shall be

interpreted and supplemented in light of the common law and the decisional law of this state. These rules shall not be construed to affect or derogate from the constitutional rights of any defendant.

RULE 1.2
PURPOSE AND CONSTRUCTION

These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, effective justice, and the elimination of unjustifiable expense and delay.

RULE 1.3
EFFECT

Except as otherwise provided elsewhere in these rules, on their effective date:

(a) Any acts done before the effective date in any proceedings then pending or any action taken in any proceeding pending under rules of procedure in effect prior to the effective date of these rules and any constitutional right are not impaired by these rules.

(b) These rules also apply to any proceedings in court then pending or thereafter commenced regardless of when the proceedings were commenced, except to the extent that in the opinion of the court, the former procedure should continue to be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedures of these rules.

RULE 1.4
PROSECUTING ATTORNEY DEFINITION

Whenever used in these rules, prosecuting attorney shall include deputy prosecuting attorneys, or such other person as may be designated by statute.

RULE 1.5
STYLE AND FORM

[Reserved. See GR 14.]

RULE 2.1
THE INDICTMENT AND THE INFORMATION

(a) Use of Indictment or Information. The initial pleading by the State shall be an indictment or an information in all criminal proceedings filed by the prosecuting attorney.

(1) Nature. The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney. Allegations made in one count may be incorporated by reference in another count. It may be alleged that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means. The indictment or information shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated. Error in the citation or its omission shall not be ground for dismissal of the indictment or information or for reversal of a conviction if the error or omission did not mislead the defendant to the defendant's prejudice.

(2) Contents. The indictment or the information shall contain or have

attached to it the following information when filed with the court:
(i) the name, address, date of birth, and sex of the defendant;
(ii) all known personal identification numbers for the defendant, including the Washington driver's operating license (DOL) number, the state criminal identification (SID) number, the state criminal process control number (PCN), the JUVIS control number, and the Washington Department of Corrections (DOC) number.
(b) Surplusage. The court on motion of the defendant may strike surplusage from the indictment or information.
(c) Bill of Particulars. The court may direct the filing of a bill of particulars. A motion for a bill of particulars may be made before arraignment or within 10 days after arraignment or at such later time as the court may permit.
(d) Amendment. The court may permit any information or bill of particulars to be amended at any time before verdict or finding if substantial rights of the defendant are not prejudiced.
(e) Defendant's Criminal History. Upon the filing of an indictment or information charging a felony, the prosecuting attorney shall request a copy of the defendant's criminal history, as defined in RCW 9.94A.030, from the Washington State Patrol Identification and Criminal History Section.

Comment

Supersedes RCW 10.37.020, .025, .026, .035, .180; RCW 10.40.080; RCW 10.46.170. The purpose of section (f) is to ensure that the defendant's criminal history is available when and if the court is required to determine the validity of a plea agreement.

RULE CrR 2.2
WARRANT OF ARREST AND SUMMONS

(a) Warrant of Arrest.

(1) Generally. If an indictment is found or an information is filed, the court may direct the clerk to issue a warrant for the arrest of the defendant.

(2) Probable Cause. Before ruling on a request for a warrant the court may require the complainant to appear personally and may examine under oath the complainant and any witnesses the complainant may produce. A warrant of arrest may not issue unless the court determines that there is probable cause to believe that the defendant committed the offense charged. The court shall determine probable cause based on an affidavit, a document as provided in RCW 9A.72.085 or any law amendatory thereto, or sworn testimony establishing the grounds for issuing the warrant. Sworn testimony shall be recorded electronically or stenographically. The evidence shall be preserved and shall be subject to constitutional limitations for probable cause determinations and may be hearsay in whole or in part.

(3) Ascertaining Defendant's Current Address.

(i) Search for address. The court shall not issue a warrant unless it determines that the complainant has attempted to ascertain the defendant's current address by searching the following: (A) the District Court Information System database (DISCIS), (B) the driver's license and identicard database maintained by the Department of Licenses; and (C) the database maintained by the Department of Corrections listing persons incarcerated and under supervision. The court in its discretion may require that other databases be searched.

(ii) Exemptions from Address Search. The search required by subdivision (i) shall not be required if (A) the defendant has already appeared in court after filing of the same case, (B) the defendant is known to be in custody, or (C) the defendant's name is unknown.

(iii) Effect of Erroneous Issuance. If a warrant is erroneously issued in violation of this subsection (a)(3), that error shall not affect the validity of the warrant.

(b) Issuance of Summons in Lieu of Warrant.

(1) Generally. If an indictment is found or an information is filed, the court may direct the clerk to issue a summons commanding the defendant to appear before the court at a specified time and place.

(2) When Summons Must Issue. The court shall direct the clerk to issue a summons instead of a warrant unless it finds reasonable cause to believe that the defendant (i) will not appear in response to a summons, (ii) will commit a violent offense, (iii) will interfere with witnesses or the administration of justice, or (iv) is in custody.

(3) Summons. A summons shall be in writing and in the name of the State of Washington, shall be signed by the clerk with the title of the office, and shall state the date when issued and the county where issued. It shall state the name of the defendant and shall summon the defendant to appear

before the court at a stated time and place.

(4) Failure To Appear on Summons. If a person fails to appear in response to a summons, or if service is not effected within a reasonable time, a warrant for arrest may issue.

(c) Requisites of a Warrant. The warrant shall be in writing and in the name of the State of Washington, shall be signed by the clerk with the title of the office, and shall state the date when issued and the county where issued. It shall specify the name of the defendant, or if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty. The warrant shall specify the offense charged against the defendant and that the court has found that probable cause exists to believe the defendant has committed the offense charged and shall command that the defendant be arrested and brought forthwith before the court issuing the warrant. If the offense is bailable, the judge shall set forth in the order for the warrant, bail, or other conditions of release.

(d) Execution; Service.

(1) Execution of Warrant. The warrant shall be directed to all peace officers in the state and shall be executed only by a peace officer.

(2) Service of Summons. The summons may be served any place within the state. It shall be served by a peace officer who shall deliver a copy of the same to the defendant personally, or it may be served by mailing the same, postage prepaid, to the defendant at the defendant's address.

(e) Return. The officer executing a warrant shall make return to the court before whom the defendant is brought pursuant to these rules. At the request of the prosecuting attorney any unexecuted warrant shall be returned to the issuing court to be canceled. The person to whom a summons has been delivered for service shall, on or before the return date, file a return with the court before which the summons is returnable. For reasonable cause, the court may order that the warrant be returned to it.

(f) Defective Warrant or Summons.

(1) Amendment. No person arrested under a warrant or appearing in response to a summons shall be discharged from custody or dismissed because of any irregularity in the warrant or summons, but the warrant or summons may be amended so as to remedy any such irregularity.

(2) Issuance of New Warrant or Summons. If during the preliminary examination of any person arrested under a warrant or appearing in response to a summons, it appears that the warrant or summons does not properly name or describe the defendant or the offense with which the defendant is charged, or that although not guilty of the offense specified in the warrant or summons, there is reasonable ground to believe that the defendant is guilty of some other offense, the judge shall not discharge or dismiss the defendant but may allow a new indictment or information to be filed and shall thereupon issue a new warrant or summons.

(g) Failure to Issue Warrant---Dismissal. Upon five days' notice to the prosecuting attorney, the court shall dismiss a charge without prejudice if (i) 90 days have elapsed since the indictment or information was filed and (ii) on the date that the order of dismissal is entered, no warrant has been issued and the defendant has not appeared in court.

[Amended effective September 1, 1983; September 1, 1986; September 1, 1995; September 1, 2003; September 1, 2006.]

Comment

Supersedes RCW 10.31.010, .020.

RULE 2.3
SEARCH AND SEIZURE

(a) Authority To Issue Warrant. A search warrant authorized by this rule may be issued by the court upon request of a peace officer or a prosecuting attorney.

(b) Property or Persons Which May Be Seized With a Warrant. A warrant may be issued under this rule to search for and seize any (1) evidence of a crime; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) weapons or other things by means of which a crime has been committed or reasonably appears about to be committed; or (4) person for whose arrest there is probable cause, or who is unlawfully restrained.

(c) Issuance and Contents. A search warrant may be issued only if the court determines there is probable cause for the issuance of a warrant.

There must be an affidavit, a document as provided in RCW 9A.72.085 or any law amendatory thereto, or sworn testimony establishing the grounds for issuing the warrant. The sworn testimony may be an electronically recorded telephonic statement. The recording or a duplication of the recording shall be a part of the court record and shall be transcribed if requested by a party if there is a challenge to the validity of the warrant or if ordered by the court. The evidence in support of the finding of probable cause shall be preserved and shall be subject to constitutional limitations for such determinations and may be hearsay in whole or in part. If the court finds that probable cause for the issuance of a warrant exists, it shall issue a warrant or direct an individual whom it authorizes for such purpose to affix the court's signature to a warrant identifying the property or person and naming or describing the person, place or thing to be searched. The court shall record a summary of any additional evidence on which it relies. The warrant shall be directed to any peace officer. It shall command the officer to search, within a specified period of time not to exceed 10 days, the person, place, or thing named for the property or person specified. It shall designate to whom it shall be returned. The warrant may be served at any time.

(d) Execution and Return With Inventory. The peace officer taking property under the warrant shall give to the person from whom or from whose premises the property is taken a copy of the warrant and a receipt for the property taken. If no such person is present, the officer may post a copy of the search warrant and receipt. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person from whose possession or premises the property is taken, or in the presence of at least one person other than the officer. The court shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(e) Motion for Return of Property. A person aggrieved by an unlawful search and seizure may move the court for the return of the property on the ground that the property was illegally seized and that the person is lawfully entitled to possession thereof. If the motion is granted the property shall be returned. If a motion for return of property is made or comes on for hearing after an indictment or information is filed in the court in which the motion is pending, it shall be treated as a motion to suppress.

(f) Searches of Media.

(1) Scope. If an application for a search warrant is governed by RCW 10.79.015(3) or 42 U.S.C. sections 2000aa et seq., this section controls the procedure for obtaining the evidence.

(2) Subpoena Duces Tecum. Except as provided in subsection (3), if the court determines that the application satisfies the requirements for issuance of a warrant, as provided in section (c) of this rule, the court shall issue a subpoena duces tecum in accordance with CR 45(b).

(3) Warrant. If the court determines that the application satisfies the requirements for issuance of a warrant and that RCW 10.79.015(3) and 42 U.S.C. sections 2000aa et seq. permit issuance of a search warrant rather than a subpoena duces tecum, the court may issue a warrant.

Comment

Supersedes RCW 10.79.010, .030.

RULE 3.1
RIGHT TO AND ASSIGNMENT OF LAWYER

(a) Types of Proceedings. The right to a lawyer shall extend to all criminal proceedings for offenses punishable by loss of liberty regardless of their denomination as felonies, misdemeanors, or otherwise.

(b) Stage of Proceedings.

(1) The right to a lawyer shall accrue as soon as feasible after the defendant is taken into custody, appears before a committing magistrate, or is formally charged, whichever occurs earliest.

(2) A lawyer shall be provided at every stage of the proceedings, including sentencing, appeal, and post-conviction review. A lawyer initially appointed shall continue to represent the defendant through all stages of the proceedings unless a new appointment is made by the court following withdrawal of the original lawyer pursuant to section (e) because geographical considerations or other factors make it necessary.

(c) Explaining the Availability of a Lawyer.

(1) When a person is taken into custody that person shall immediately be advised of the right to a lawyer. Such advice shall be made in words easily understood, and it shall be stated expressly that a person who is unable to pay a lawyer is entitled to have one provided without charge.

(2) At the earliest opportunity a person in custody who desires a lawyer shall be provided access to a telephone, the telephone number of the public defender or official responsible for assigning a lawyer, and any other means necessary to place the person in communication with a lawyer.

(d) Assignment of Lawyer.

(1) Unless waived, a lawyer shall be provided to any person who is financially unable to obtain one without causing substantial hardship to the person or to the persons family. A lawyer shall not be denied to any

person merely because the person's friends or relatives have resources adequate to retain a lawyer or because the person has posted or is capable of posting bond.

(2) The ability to pay part of the cost of a lawyer shall not preclude assignment. The assignment of a lawyer may be conditioned upon part payment pursuant to an established method of collection.

(3) Information given by a person to assist in the determination of whether the person is financially able to obtain a lawyer shall be under oath and shall not be available for use by the prosecution in the pending case in chief.

(e) Withdrawal of Lawyer. Whenever a criminal cause has been set for trial, no lawyer shall be allowed to withdraw from said cause, except upon written consent of the court, for good and sufficient reason shown.

(f) Services Other Than a Lawyer.

(1) A lawyer for a defendant who is financially unable to obtain investigative, expert, or other services necessary to an adequate defense in the case may request them by a motion to the court.

(2) Upon finding the services are necessary and that the defendant is financially unable to obtain them, the court, or a person or agency to whom the administration of the program may have been delegated by local court rule, shall authorize the services. The motion may be made ex parte, and, upon a showing of good cause, the moving papers may be ordered sealed by the court, and shall remain sealed until further order of the court. The court, in the interest of justice and on a finding that timely procurement of necessary services could not await prior authorization, shall ratify such services after they have been obtained.

(3) Reasonable compensation for the services shall be determined and payment directed to the organization or person who rendered them upon the filing of a claim for compensation supported by affidavit specifying the time expended and the services and expenses incurred on behalf of the defendant, and the compensation received in the same case or for the same services from any other source.

Comment

Supersedes RCW 10.01.110; RCW 10.40.030; RCW 10.46.050.

CrR 3.2
RELEASE OF ACCUSED

If the court does not find, or a court has not previously found, probable cause, the accused shall be released without conditions.

(a) Presumption of Release in Noncapital Cases. Any person, other than a person charged with a capital offense, shall at the preliminary appearance or reappearance pursuant to rule 3.2.1 or CrRLJ 3.2.1 be ordered released on the accused's personal recognizance pending trial unless:

(1) the court determines that such recognizance will not reasonably assure the accused's appearance, when required, or

(2) there is shown a likely danger that the accused:

(a) will commit a violent crime, or

(b) will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice.

For the purpose of this rule, "violent crimes" are not limited to crimes defined as violent offenses in RCW 9.94A.030. In making the determination herein, the court shall, on the available information, consider the relevant facts including, but not limited to, those in subsections (c) and (e) of this rule.

(b) Showing of Likely Failure to Appear?Least Restrictive Conditions of Release. If the court determines that the accused is not likely to appear if released on personal recognizance, the court shall impose the least restrictive of the following conditions that will reasonably assure that the accused will be present for later hearings, or, if no single condition gives that assurance, any combination of the following conditions:

(1) Place the accused in the custody of a designated person or organization agreeing to supervise the accused;

(2) Place restrictions on the travel, association, or place of abode of the accused during the period of release;

(3) Require the execution of an unsecured bond in a specified amount;

(4) Require the execution of a bond in a specified amount and the deposit in the registry of the court in cash or other

security as directed, of a sum not to exceed 10 percent of the amount of the bond, such deposit to be returned upon the performance of the conditions of release or forfeited for violation of any condition of release;

(5) Require the execution of a bond with sufficient solvent sureties, or the deposit of cash in lieu thereof;

(6) Require the accused to return to custody during specified hours or to be placed on electronic monitoring, if available; or

(7) Impose any condition other than detention deemed reasonably necessary to assure appearance as required.
If the court determines that the accused must post a secured or unsecured bond, the court shall consider, on the available information, the accused's financial resources for the purposes of setting a bond that will reasonably assure the accused's appearance.

(c) Relevant Factors?Future Appearance. In determining which conditions of release will reasonably assure the accused's appearance, the court shall, on the available information, consider the relevant facts including but not limited to:

(1) The accused's history of response to legal process, particularly court orders to personally appear;

(2) The accused's employment status and history, enrollment in an educational institution or training program, participation in a counseling or treatment program, performance of volunteer work in the community, participation in school or cultural activities or receipt of financial assistance from the government;

(3) The accused's family ties and relationships;

(4) The accused's reputation, character and mental condition;

(5) The length of the accused's residence in the community;

(6) The accused's criminal record;

(7) The willingness of responsible members of the community to vouch for the accused's reliability and assist the accused in complying with conditions of release;

(8) The nature of the charge, if relevant to the risk of nonappearance;

(9) Any other factors indicating the accused's ties to the community.

(d) Showing of Substantial Danger?Conditions of Release. Upon a showing that there exists a substantial danger that the accused will commit a violent crime or that the accused will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice, the court may impose one or more of the following nonexclusive conditions:

(1) Prohibit the accused from approaching or communicating in any manner with particular persons or classes of persons;

(2) Prohibit the accused from going to certain geographical areas or premises;

(3) Prohibit the accused from possessing any dangerous weapons or firearms, or engaging in certain described activities or possessing or consuming any intoxicating liquors or drugs not prescribed to the accused;

(4) Require the accused to report regularly to and remain under the supervision of an officer of the court or other person or agency;

(5) Prohibit the accused from committing any violations of criminal law;

(6) Require the accused to post a secured or unsecured bond or deposit cash in lieu thereof, conditioned on compliance with all conditions of release. This condition may be imposed only if no less restrictive condition or combination of conditions would reasonably assure the safety of the community. If the court determines under this section that the accused must post a secured or unsecured bond, the court shall consider, on the available information, the accused's financial resources for the purposes of setting a bond that will reasonably assure the safety of the community and prevent the defendant from intimidating witnesses or otherwise unlawfully interfering with the administration of justice.

(7) Place the accused in the custody of a designated person or organization agreeing to supervise the accused;

(8) Place restrictions on the travel, association, or place of abode of the accused during the period of release;

(9) Require the accused to return to custody during specified hours or to be placed on electronic monitoring, if available; or

(10) Impose any condition other than detention to assure noninterference with the administration of justice and reduce danger to others or the community.

(e) Relevant Factors?Showing of Substantial Danger. In determining which conditions of release will reasonably assure the accused's noninterference with the administration of justice, and reduce danger to others or the community, the court shall, on the available information, consider the relevant facts including but not limited to:

(1) The accused's criminal record;

(2) The willingness of responsible members of the community to vouch for the accused's reliability and assist the accused in complying with conditions of release;

(3) The nature of the charge;

(4) The accused's reputation, character and mental condition;

(5) The accused's past record of threats to victims or witnesses or interference with witnesses or the administration of justice;

(6) Whether or not there is evidence of present threats or intimidation directed to witnesses;

(7) The accused's past record of committing offenses while on pretrial release, probation or parole; and

(8) The accused's past record of use of or threatened use of deadly weapons or firearms, especially to victim's or witnesses.

(f) Delay of Release. The court may delay release of a person in the following circumstances:

(1) If the person is intoxicated and release will jeopardize the persons safety or that of others, the court may delay release of the person or have the person transferred to the custody and care of a treatment center.

(2) If the persons mental condition is such that the court believes the person should be interviewed by a mental health professional for possible commitment to a mental treatment facility pursuant to RCW 71.05, the court may delay release of the person.

(3) Unless other grounds exist f or continued detention, a person detained pursuant to this section must be released from detention not later than 24 hours after the preliminary appearance.

(g) Release in Capital Cases. Any person charged with a capital offense shall not be released in accordance with this rule unless the court finds that release on conditions will reasonably assure that the accused will appear for later hearings, will not significantly interfere with the administration of justice and will not pose a substantial danger to another or the community. If a risk of flight, interference or danger is believed to exist, the person may be ordered detained without bail.

(h) Release After Finding or Plea of Guilty. After a person has been found or pleaded guilty, and subject to RCW 9.95.062, 9.95.064, 10.64.025, and 10.64.027, the court may revoke, modify, or suspend the terms of release and/or bail previously ordered.

(i) Order for Release. A court authorizing the release of the accused under this rule shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform the accused of the penalties applicable to violations of the conditions imposed, if any, shall inform the accused of the penalties applicable to violations of the conditions of the accused's release and shall advise the accused that a warrant for the accused's arrest may be issued upon any such violation.

(j) Review of Conditions.

(1) At any time after the preliminary appearance, an accused who is being detained due to failure to post bail may move for reconsideration of bail. In connection with this motion, both parties may present information by proffer or otherwise. If deemed necessary for a fair determination of the issue, the court may direct the taking of additional testimony.

(2) A hearing on the motion shall be held within a reasonable time. An electronic or stenographic record of the hearing shall be made. Following the hearing, the court

shall promptly enter an order setting out the conditions of release in accordance with section (i). If a bail requirement is imposed or maintained, the court shall set out its reasons on the record or in writing.

(k) Amendment or Revocation of Order.

(1) The court ordering the release of an accused on any condition specified in this rule may at any time on change of circumstances, new information or showing of good cause amend its order to impose additional or different conditions for release.

(2) Upon a showing that the accused has willfully violated a condition of release, the court may revoke release and may order forfeiture of any bond. Before entering an order revoking release or forfeiting bail, the court shall hold a hearing in accordance with section (j). Release may be revoked only if the violation is proved by clear and convincing evidence.

(l) Arrest for Violation of Conditions.

(1) Arrest With Warrant. Upon the court's own motion or a verified application by the prosecuting attorney alleging with specificity that an accused has willfully violated a condition of the accused's release, a court shall order the accused to appear for immediate hearing or issue a warrant directing the arrest of the accused for immediate hearing for reconsideration of conditions of release pursuant to section (k).

(2) Arrest Without Warrant. A law enforcement officer having probable cause to believe that an accused released pending trial for a felony is about to leave the state or has violated a condition of such release under circumstances rendering the securing of a warrant impracticable may arrest the accused and take him forthwith before the court for reconsideration of conditions of release pursuant to section (k).

(m) Evidence. Information stated in, or offered in connection with, any order entered pursuant to this rule need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(n) Forfeiture. Nothing contained in this rule shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court.

(o) Accused Released on Recognizance or Bail--Absence--Forfeiture. If the accused has been released on the accused's own recognizance, on bail, or has deposited money instead thereof, and does not appear when the accused's personal appearance is necessary or violated conditions of release, the court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the clerk to issue a bench warrant for the accused's arrest.

Comment

Supersedes RCW 10.16.190; RCW 10.19.010, .020, .025, .050, .070, .080; RCW 10.40.130; RCW 10.46.170; RCW 10.64.035.

[Adopted amended effective September 1, 2002.]

CrR 3.2.1
PROCEDURE FOLLOWING WARRANTLESS ARREST - PRELIMINARY APPEARANCE

(a) Probable Cause Determination. A person who is arrested shall have a judicial determination of probable cause no later than 48 hours following the person’s arrest, unless probable cause has been determined prior to such arrest.

(b) How Determined. The court shall determine probable cause on evidence presented by a peace officer or prosecuting authority in the same manner as provided for a warrant of arrest in rule 2.2(a). The evidence shall be preserved and may consist of an electronically recorded telephonic statement. If the court finds that release without bail should be denied or that conditions should attach to the release on personal recognizance, other than

the promise to appear for trial, the court shall proceed to determine whether probable cause exists to believe that the accused committed the offense charged, unless this determination has previously been made by a court. Before making the determination, the court may consider an affidavit, a document as provided in RCW 9A.72.085 or any law amendatory thereto, or sworn testimony, and further may examine under oath the affiant and any witnesses the affiant may produce. Sworn testimony shall be electronically or stenographically recorded. The evidence shall be preserved and shall be subject to constitutional limitations for probable cause determinations, and may be hearsay in whole or in part.

(c) Court Days. For the purpose of section (a) Saturday, Sunday and holidays may be considered judicial days.

(d) Preliminary Appearance.

(1) Adult. Unless a defendant has appeared or will appear before a court of limited jurisdiction for a preliminary appearance pursuant to CrRLJ 3.2.1(a), any defendant whether detained in jail or subjected to court-authorized conditions of release shall be brought before the superior court as soon as practicable after the detention is commenced, the conditions of release are imposed or the order is entered, but in any event before the close of business on the next court day. A person is not subject to conditions of release if the person has been served with a summons and the only obligation is to appear in court on a future date.

(2) Juveniles. Any person in whose case the juvenile court has entered a written order declining jurisdiction, and who is detained in custody must be taken to appear before the superior court as soon as practicable after the juvenile court order is entered, but in any event before the close of business on the next court day.

(3) Unavailability. If an accused is unavailable for preliminary appearance because of physical or mental disability, the court may, for good cause shown and recited in a written order, enlarge the time prior to preliminary appearance.

(e) Procedure at Preliminary Appearance.

(1) At the preliminary appearance, the court shall provide for a lawyer pursuant to rule 3.1 and for pretrial release pursuant to rule 3.2, and the court shall orally inform the accused:

(i) of the nature of the charge against the accused;

(ii) of the right to be assisted by a lawyer at every stage of the proceedings; and

(iii) of the right to remain silent, and that anything the accused says may be used against him or her.

(2) If the court finds that release should be denied or that conditions should attach to release on personal recognizance, other than the promise to appear at subsequent hearings, the court shall proceed to determine whether probable cause exists to believe that the accused committed the offense charges, unless this determination has previously been made by a court. Before making the determination, the court may consider affidavits filed or sworn testimony and further may examine under oath the affiant and any witnesses he or she may produce. Subject to constitutional limitations, the findings of probable cause may be based on evidence which is hearsay in whole or in part.

(f) Time Limits.

(1) Unless an information or indictment is filed or the affected person consents in writing or on the record in open court, an accused, shall not be detained in jail or subjected to conditions of release for more than 72 hours after the defendant's detention in jail or release on conditions, whichever occurs first. Computation of the 72 hour period shall not include any part of Saturdays, Sundays or holidays.

(2) If no information or indictment has been filed at the time of the preliminary appearance, and the accused has not otherwise consented, the court shall either:

(i) order in writing that the accused be released from jail or exonerated from the conditions of release at a time certain which is within the period described in subsection (f)(1); or

(ii) set a time at which the accused shall reappear before the court. The time set for reappearance must also be within the period described in subsection (f)(1). If no information or indictment has been filed by the time set for release or reappearance, the accused shall be immediately released from jail

or deemed exonerated from all conditions of release.

[Former Rule 3.2A and former Rule 3.2B adopted effective July 1, 1992; redesignated as Rule 3.2.1 adopted effective April 3, 2001; amended effective September 1, 2002.]

RULE 3.2A

[Adopted effective July 1, 1992; amended effective September 1, 1995; repealed effective April 3, 2001.]

RULE 3.2B

[Former Rule 3.2A adopted effective August 1, 1980; redesignated as Rule 3.2B effective July 1, 1992; repealed effective April 3, 2001.]

RULE CrR 3.3
TIME FOR TRIAL

(a) General Provisions.

(1) Responsibility of Court. It shall be the responsibility of the court to ensure a trial in accordance with this rule to each person charged with a crime.

(2) Precedence Over Civil Cases. Criminal trials shall take precedence over civil trials.

(3) Definitions. For purposes of this rule:

(i) "Pending charge" means the charge for which the allowable time for trial is being computed.

(ii) "Related charge" means a charge based on the same conduct as the pending charge that is ultimately file in the superior court.

(iii) "Appearance" means the defendant's physical presence in the adult division of the superior court where the pending charge was filed. Such presence constitutes appearance only if (A) the prosecutor was notified of the presence and (B) the presence is contemporaneously noted on the record under the cause number of the pending charge.

(iv) "Arraignment" means the date determined under CrR 4.1(b).

(v) "Detained in jail" means held in the custody of a correctional facility pursuant to the pending charge. Such detention excluded any period in which a defendant is on electronic home monitoring, is being held in custody on an unrelated charge or hold, or is serving a sentence of confinement.

(4) Construction. The allowable time for trial shall be computed in accordance with this rule. If a trial is timely under the language of this rule, but was delayed by circumstances not addressed in this rule or CrR 4.1, the pending charge shall not be dismissed unless the defendant's constitutional right to a speedy trial was violated.

(5) Related Charges. The computation of the allowable time for trial of a pending charge shall apply equally to all related charges.

(6) Reporting of Dismissals and Untimely Trials. The court shall report to the Administrative Office of the Courts, on a form determined by that office, any case in which

(i) the court dismissed a charge on a determination pursuant to section (h) that the charge had not been brought to trial within the time limit required by this rule, or

(ii) the time limits would have been violated absent the cure period authorized by section (g)

(b) Time for Trial.

(1) Defendant Detained in Jail. A defendant who is detained in jail shall be brought to trial within the longer of

(i) 60 days after the commencement date specified in this rule, or

(ii) the time specified under subsection (b)(5).

(2) Defendant Not Detained in Jail. A defendant who is not detained in jail shall be brought to trial within the longer of

(i) 90 days after the commencement date specified in this rule, or

(ii) the time specified in subsection (b)(5)

(3) Release of Defendant. If a defendant is released from jail before the 60-day time limit has expired, the limit shall be extended to 90 days.

(4) Return to Custody Following Release. If a defendant not detained in jail at the time the trial date was set is subsequently returned to custody on the same or related charge, the 90-day limit shall continue to apply. If the defendant is detained in jail when trial is reset following a new commencement date, the 60-day limit shall apply.

(5) Allowable Time After Excluded Period. If any period of time is excluded pursuant to section (e), the allowable time for trial shall not expire earlier than 30 days after the end of that excluded period.

(c) Commencement Date.

(1) Initial Commencement Date. The initial commencement date shall be the date of arraignment as determined under CrR 4.1.

(2) Resetting of Commencement Date. On occurrence of one of the following events, a new commencement date shall be established, and the elapsed time shall be reset to zero. If more than one of these events occurs, the commencement date shall be the latest of the dates specified in this subsection.

(i) Waiver. The filing of a written waiver of the defendant's rights under this rule signed by the defendant. The new commencement date shall be the date specified in the waiver, which shall not be earlier than the date on which the waiver was filed. If no date is specified, the commencement date shall be the date of the trial contemporaneously or subsequently set by the court.

(ii) Failure to Appear. The failure of the defendant to appear for any proceeding at which the defendant's presence was required. The new commencement date shall be the date of the defendant's next appearance.

(iii) New Trial. The entry of an order granting a mistrial or new trial or allowing the defendant to withdraw a plea of guilty. The new commencement date shall be the date the order is entered.

(iv) Appellate Review or Stay. The acceptance of review or grant of a stay by an appellate court. The new commencement date shall be the date of the defendant's appearance that next follows the receipt by the clerk of the superior court of the mandate or written order terminating review or stay.

(v) Collateral Proceeding. The entry of an order granting a new trial pursuant to a personal restraint petition, a habeas corpus proceeding, or a motion to vacate judgment. The new commencement date shall be the date of the defendant's appearance that next follows either the expiration of the time to appeal such order or the receipt by the clerk of the superior court of notice of action terminating the collateral proceeding, whichever comes later.

(vi) Change of Venue. The entry of an order granting a change of venue. The new commencement date shall be the date of the order.

(vii) Disqualification of Counsel. The disqualification of the defense attorney or prosecuting attorney. The new commencement date shall be the date of the disqualification.

(d) Trial Settings and Notice---Objections---Loss of Right to Object.

(1) Initial Setting of Trial Date. The court shall, within 15 days of the defendant's actual arraignment in superior court or at the omnibus hearing, set a date for trial which is within the time limits prescribed by this rule and notify counsel for each party of the date set. If a defendant is not represented by counsel, the notice shall be given to the defendant and may be

mailed to the defendant's last known address. The notice shall set forth the proper date of the defendant's arraignment and the date set for trial.

(2) Resetting of Trial Date. When the court determines that the trial date should be reset for any reason, including but not limited to the applicability of a new commencement date pursuant to subsection (c)(2) or a period of exclusion pursuant to section (e), the court shall set a new date for trial which is within the time limits prescribed and notify each counsel or party of the date set.

(3) Objection to Trial Setting. A party who objects to the date set upon the ground that it is not within the time limits prescribed by this rule must, within 10 days after the notice is mailed or otherwise given, move that the court set a trial within those time limits. Such motion shall be promptly noted for hearing by the moving party in accordance with local procedures. A party who fails, for any reason, to make such a motion shall lose the right to object that a trial commenced on such a date is not within the time limits prescribed by this rule.

(4) Loss of Right to Object. If a trial date is set outside the time allowed by this rule, but the defendant lost the right to object to that date pursuant to subsection (d)(3), that date shall be treated as the last allowable date for trial, subject to section (g). A later trial date shall be timely only if the commencement date is reset pursuant to subsection (c)(2) or there is a subsequent excluded period pursuant to section (e) and subsection (b)(5).

(e) Excluded Periods. The following periods shall be excluded in computing the time for trial:

(1) Competency Proceedings. All proceedings relating to the competency of a defendant to stan d trial on the pending charge, beginning on the date when the competency examination is ordered and terminating when the court enters a written order finding the defendant to be competent.

(2) Proceedings on Unrelated Charges. Arraignment, pre-trial proceedings, trial, and sentencing on an unrelated charge.

(3) Continuances. Delay granted by the court pursuant to section (f).

(4) Period between Dismissal and Refiling. The time between the dismissal of a charge and the refiling of the same or related charge.

(5) Disposition of Related Charge. The period between the commencement of trial or the entry of a plea of guilty on one charge and the defendant's arraignment in superior court on a related charge.

(6) Defendant Subject to foreign or Federal Custody or Conditions. The time during which a defendant is detained in jail or prison outside the state of Washington or in a federal jail or prison and the time during which a defendant is subjected to conditions of release not imposed by a court of the State of Washington.

(7) Juvenile Proceedings. All proceedings in juvenile court.

(8) Unavoidable or Unforeseen Circumstances. Unavoidable or unforeseen circumstances affecting the time for trial beyond the control of the court or of the parties. This exclusion also applies to the cure period of section (g).

(9) Disqualification of Judge. A five-day period of time commencing with the disqualification of the judge to whom the case is assigned for trial.

(f) Continuances. Continuances or other delays may be granted as follows:

(1) Written Agreement. Upon written agreement of the parties, which must be signed by the defendant or all defendants, the court may continue the trial date to a specified date.

(2) Motion by the Court or a Party. On motion of the court or a party, the court may continue the trial date to a specified date when such continuance is required in the administration of justice and the defendant will not be prejudiced in the presentation of his or her defense. The motion must be made before the time for trial has expired. The court must state on the record or in writing the reasons for the continuance. The bringing of such motion by or on behalf of any party waives that party's objection to the requested delay.

(g) Cure Period. The court may continue the case beyond the limits specified in section (b) on motion of the court or a party made within five days after the time for trial has expired. Such a continuance may be granted only once in the case upon a finding on the record or in writing that the defendant will not be substantially prejudiced in the presentation of his or her defense. The period of delay shall be for no more than 14 days

for a defendant detained in jail, or 28 days for a defendant not detained in jail, from the date that the continuance is granted. The court may direct the parties to remain in attendance or be on-call for trial assignment during the cure period.

(h) Dismissal With Prejudice. A charge not brought to trial within the time limit determined under this rule shall be dismissed with prejudice. The State shall provide notice of dismissal to the victim and at the court's discretion shall allow the victim to address the court regarding the impact of the crime. No case shall be dismissed for time-to-trial reasons except as expressly required by this rule, a statute, or the state or federal constitution.

[Amended effective May 21, 1976; November 17, 1978; August 1, 1980; September 1, 1986; November 29, 1991; November 7, 1995; September 1, 2000; September 1, 2001; September 1, 2003.]

CrR
RULE 3.4
PRESENCE OF THE DEFENDANT

(a) When Necessary. The defendant shall be present at the arraignment, at every stage of the trial including the empaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by these rules, or as excused or excluded by the court for good cause shown.

(b) Effect of Voluntary Absence. The defendant's voluntary absence after the trial has commenced in his or her presence shall not prevent continuing the trial to and including the return of the verdict. A corporation may appear by its lawyer for all purposes. In prosecutions for offenses punishable by fine only, the court, with the written consent of the defendant, may permit arraignment, plea, trial and imposition of sentence in the defendant's absence.

(c) Defendant Not Present. If in any case the defendant is not present when his or her personal attendance is necessary, the court may order the clerk to issue a bench warrant for the defendant's arrest, which may be served as a warrant of arrest in other cases.

(d) Video Conference Proceedings.

(1) Authorization. Preliminary appearances held pursuant to CrR 3.2.1, arraignments held pursuant to this rule and CrR 4.1, bail hearings held pursuant to CrR 3.2, and trial settings held pursuant to CrR 3.3, may be conducted by video conference in which all participants can simultaneously see, hear, and speak with each other. Such proceedings shall be deemed held in open court and in the defendant's presence for the purposes of any statute, court rule or policy. All video conference hearings conducted pursuant to this rule shall be public, and the public shall be able to simultaneously see and hear all participants and speak as permitted by the trial court judge. Any party may request an inperson hearing, which may in the trial court judge's discretion be granted.

(2) Agreement. Other trial court proceedings including the entry of a Statement of Defendant on Plea of Guilty as provided for by CrR 4.2 may be conducted by video conference only by agreement of the parties, either in writing or on the record, and upon the approval of the trial court judge pursuant to local court rule.

(3) Standards for Video Conference Proceedings. The judge, counsel, all parties, and the public must be able to see and hear each other during proceedings, and speak as permitted by the judge. Video conference facilities must provide for confidential communications between attorney and client and security sufficient to protect the safety of all participants and observers. In interpreted proceedings, the interpreter must be located next to the defendant and the proceeding must be conducted to assure that the interpreter can hear all participants.

[Amended effective September 1, 1995; December 28, 1999; April 3, 2001.]

RULE 3.5
CONFESSION PROCEDURE

(a) Requirement for and Time of Hearing. When a statement of the accused is to be offered in evidence, the judge at the time of the omnibus hearing shall hold or set the time for a hearing, if not previously held, for the purpose of determining whether the statement is admissible. A court reporter or a court approved electronic recording device shall record the evidence adduced at this hearing.

(b) Duty of Court To Inform Defendant. It shall be the duty of the court to inform the defendant that: (1) he may, but need not, testify at the hearing on the circumstances surrounding the statement; (2) if he does testify at the hearing, he will be subject to cross examination with respect to the circumstances surrounding the statement and with respect to his credibility; (3) if he does testify at the hearing, he does not by so testifying waive his right to remain silent during the trial; and (4) if he does testify at the hearing, neither this fact nor his testimony at the hearing shall be mentioned to the jury unless he testifies concerning the statement at trial.

(c) Duty of Court To Make a Record. After the hearing, the court shall set forth in writing: (1) the undisputed facts; (2) the disputed facts; (3) conclusions as to the disputed facts; and (4) conclusion as to whether the statement is admissible and the reasons therefor.

(d) Rights of Defendant When Statement Is Ruled Admissible. If the court rules that the statement is admissible, and it is offered in evidence: (1) the defense may offer evidence or cross-examine the witnesses, with respect to the statement without waiving an objection to the admissibility of the statement; (2) unless the defendant testifies at the trial concerning the statement, no reference shall be made to the fact, if it be so, that the defendant testified at the preliminary hearing on the admissibility of the confession; (3) if the defendant becomes a witness on this issue, he shall be subject to cross examination to the same extent as would any other witness; and, (4) if the defense raises the issue of voluntariness under subsection (1) above, the jury shall be instructed that they may give such weight and credibility to the confession in view of the surrounding circumstances, as they see fit.

RULE 3.6
SUPPRESSION HEARINGS--DUTY OF COURT

(a) Pleadings. Motions to suppress physical, oral or identification evidence, other than motion pursuant to rule 3.5, shall be in writing supported by an affidavit or document setting forth the facts the moving party anticipates will be elicited at a hearing, and a memorandum of authorities in support of the motion. Opposing counsel may be ordered to serve and file a memorandum of authorities in opposition to the motion. The court shall determine whether an evidentiary hearing is required based upon the moving papers. If the court determines that no evidentiary hearing is required, the court shall enter a written order setting forth its reasons.

(b) Hearing. If an evidentiary hearing is conducted, at its conclusion the court shall enter written findings of fact and conclusions of law.

Adopted 82 Wn.2d 1114 effective July 1, 1973
Amended 89 Wn.2d 1107 effective May 15, 1978
Amended 130 Wn.2d 1102 effective January 2, 1997

RULE CrR 4.1
ARRAIGNMENT

(a) Time.

(1) Defendant Detained in Jail. The defendant shall be arraigned not later than 14 days after the date the information or indictment is filed in the adult division of the superior court, if the defendant is (i) detained in the jail of the county where the charges are pending or (ii) subject to conditions of release imposed in connection with the same charges.

(2) Defendant Not Detained in Jail. The defendant shall be arraigned not later than 14 days after that appearance which next follows the filing of the information or indictment, if the defendant is not detained in that jail or subject to such conditions of release. Any delay in bringing the defendant before the court shall not affect the allowable time for arraignment, regardless of the reason for that delay. For purposes of this rule, "appearance" has the meaning defined in CrR 3.3(a)(3)(iii).

(b) Objection to Arraignment Date---Loss of Right to Object. A party who objects to the date of arraignment on the ground that it is not within the time limits prescribed by this rule must state the objection to the court at the time of the arraignment. If the court rules that the objection is correct, it shall establish and announce the proper date of arraignment. That date shall constitute the arraignment date for purposes of CrR 3.3. A party who fails to object as required shall lost the right

to object, and the arraignment date shall be conclusively established as the date upon which the defendant was actually arraigned.

(c) Counsel. If the defendant appears without counsel, the court shall inform the defendant of his or her right to have counsel before being arraigned. The court shall inquire if the defendant has counsel. If the defendant is not represented and is unable to obtain counsel, counsel shall be assigned by the court, unless otherwise provided.

(d) Waiver of Counsel. If the defendant chooses to proceed without counsel, the court shall ascertain whether this waiver is made voluntarily, competently and with knowledge of the consequences. If the court finds the waiver valid, an appropriate finding shall be entered in the minutes. Unless the waiver is valid, the court shall not proceed with the arraignment until counsel is provided. Waiver of counsel at arraignment shall not preclude the defendant from claiming the right to counsel in subsequent proceedings in the cause, and the defendant shall be so informed. If such claim for counsel is not timely, the court shall appoint counsel but may deny or limit a continuance.

(e) Name. Defendant shall be asked his or her true name. If the defendant alleges that the true name is one other than that by which he or she is charged, it must be entered in the minutes of the court, and subsequent proceedings shall be had by that name or other names relevant to the proceedings.

(f) Reading. The indictment or information shall be read to defendant, unless the reading is waived, and a copy shall be given to defendant.

[Adopted effective July 1, 1973; Amended effective September 1, 2003]

Comment

Supersedes RCW 10.40.010, .030, .040; RCW 10.46.030 in part, .040.

4.2 PLEAS (IN WORD FORMAT)

The contents of this item are only available on-line.

RULE 4.3
JOINDER OF OFFENSES AND DEFENDANTS

(a) Joinder of Offenses. Two or more offenses may be joined in one charging document, with each offense stated in a separate count, when the offenses, whether felonies or misdemeanors or both:

(1) Are of the same or similar character, even if not part of a single scheme or plan; or

(2) Are based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan.

(b) Joinder of Defendants. Two or more defendants may be joined in the same charging document:

(1) When each of the defendants is charged with accountability for each offense included;

(2) When each of the defendants is charged with conspiracy and one or more of the defendants is also charged with one or more offenses alleged to be in furtherance of the conspiracy; or

(3) When, even if conspiracy is not charged and all of the defendants are not charged in each count, it is alleged that the several offenses charged:

(i) were part of a common scheme or plan; or

(ii) were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others.

(c) (Reserved.)

(d) (Reserved.)

(e) Improper Joinder. Improper joinder of offenses or defendants shall not preclude subsequent prosecution on the same charge for the charge or defendant improperly joined.

RULE 4.3.1
CONSOLIDATION FOR TRIAL

(a) Consolidation Generally. Offenses or defendants properly joined under rule 4.3 shall be consolidated for trial unless the court orders severance pursuant to rule 4.4.

(b) Failure to Join Related Offenses.

(1) Two or more offenses are related offenses, for purposes of this rule, if they are within the jurisdiction and venue of the same court and are based on the same conduct.

(2) When a defendant has been charged with two or more related offenses, the timely motion to consolidate them for trial should be granted unless the court determines that because the prosecuting attorney does not have sufficient evidence to warrant trying some of the offenses at that time, or for some other reason, the ends of justice would be defeated if the motion were granted. A defendant's failure to so move constitutes a waiver of any right of consolidation as to related offenses with which the defendant knew he or she was charged.

(3) A defendant who has been tried for one offense may thereafter move to dismiss a charge for a related offense, unless a motion for consolidation of these offenses was previously denied or the right of consolidation was waived as provided in this rule. The motion to dismiss must be made prior to the second trial, and shall be granted unless the court determines that because the prosecuting attorney was unaware of the facts constituting the related offense or did not have sufficient evidence to warrant trying this offense at the time of the first trial, or for some other reason, the ends of justice would be defeated if the motion were granted.

(4) Entry of a plea of guilty to one offense does not bar the subsequent prosecution of a related offense unless the plea of guilty was entered on the basis of a plea agreement in which the prosecuting attorney agreed to seek or not to oppose dismissal of other related charges or not to prosecute other potential related charges.

(c) Authority of Court To Act on Own Motion. The court may order consolidation for trial of two or more indictments or informations if the offenses or defendants could have been joined in a single charging document under rule 4.3.

[Former Rule 4.3A adopted effective September 1, 1995; redesignated as Rule 4.3.1 effective April 3, 2001.]

RULE 4.4
SEVERANCE OF OFFENSES AND DEFENDANTS

(a) Timeliness of Motion--Waiver.

(1) A defendant's motion for severance of offenses or defendants must be made before trial, except that a motion for severance may be made before or at the close of all the evidence if the interests of justice require. Severance is waived if the motion is not made at the appropriate time.

(2) If a defendant's pretrial motion for severance was overruled he may renew the motion on the same ground before or at the close of all the evidence. Severance is waived by failure to renew the motion.

(b) Severance of Offenses. The court, on application of the prosecuting attorney, or on application of the defendant other than under section (a), shall grant a severance of offenses whenever before trial or during trial with consent of the defendant, the court determines that severance will promote a fair determination of the defendant's guilt or innocence of each offense.

(c) Severance of Defendants.

(1) A defendant's motion for severance on the ground that an out-of-court statement of a codefendant referring to him is inadmissible against him shall be granted unless:

(i) the prosecuting attorney elects not to offer the statement in the case in chief; or

(ii) deletion of all references to the moving defendant will eliminate any prejudice to him from the admission of the statement.

(2) The court, on application of the prosecuting attorney, or on application of the defendant other than under subsection (i), should grant a severance of defendants whenever:

(i) if before trial, it is deemed necessary to protect a defendant's rights to a speedy trial, or it is deemed appropriate to promote a fair determination of the guilt or innocence of a defendant; or

(ii) if during trial upon consent of the severed defendant, it is deemed necessary to achieve a fair determination of the guilt or innocence of a defendant.

(3) When such information would assist the court in ruling on a motion for severance of defendants, the court may order the prosecuting attorney

to disclose any statements made by the defendants which he intends to introduce in evidence at the trial.

(4) The assignment of a separate cause number to each defendant of those named on a single charging document is not considered a severance. Should a defendant desire that the case be severed, the defendant must move for severance.

(d) Failure To Prove Grounds for Joinder of Defendants. If, pursuant to section (a), a defendant moves to be severed at the conclusion of the prosecutions case or of all the evidence, and there is not sufficient evidence to support the grounds upon which the moving defendant was joined or previously denied severance, the court shall grant a severance if, in view of this lack of evidence, failure to sever prejudices the moving defendant.

(e) Authority of Court To Act on Own Motion. The court may order a severance of offenses or defendants before trial if a severance could be obtained on motion of a defendant or the prosecution.

[Amended effective December 28, 1990; September 1, 2007.] Comment Supersedes RCW 10.46.100.

RULE 4.5
OMNIBUS HEARING

(a) When Required. When a plea of not guilty is entered, the court shall set a time for an omnibus hearing.

(b) Time. The time set for the omnibus hearing shall allow sufficient time for counsel to (i) initiate and complete discovery; (ii) conduct further investigation of the case, as needed; and (iii) continue plea discussions.

(c) Checklist. At the omnibus hearing, the trial court on its own initiative, utilizing a checklist substantially in the form of the omnibus application by plaintiff and defendant (see section (h)) shall:

(i) ensure that standards regarding provision of counsel have been complied with;

(ii) ascertain whether the parties have completed discovery and, if not, make orders appropriate to expedite completion;

(iii) make rulings on any motions, other requests then pending, and ascertain whether any additional motions, or requests will be made at the hearing or continued portions thereof;

(iv) ascertain whether there are any procedural or constitutional issues which should be considered;

(v) upon agreement of counsel, or upon a finding that the trial is likely to be protracted or otherwise unusually complicated, set a time for a pretrial conference; and

(vi) permit defendant to change his plea.

(d) Motions. All motions and other requests prior to trial should be reserved for and presented at the omnibus hearing unless the court otherwise directs. Failure to raise or give notice at the hearing of any error or issue of which the party concerned has knowledge may constitute waiver of such error or issue. Checklist forms substantially like the memorandum required by section (h) shall be made available by the court and utilized at the hearing to ensure that all requests, errors and issues are then considered.

(e) Continuance. Any and all issues should be raised either by counsel or by the court without prior notice, and if appropriate, informally disposed of. If additional discovery, investigation or preparation, or evidentiary hearing, or formal presentation is necessary for a fair and orderly determination of any issue, the omnibus hearing should be continued from time to time until all matters raised are properly disposed of.

(f) Record. A verbatim record (electronic, mechanical or otherwise), shall be made of all proceedings at the hearing.

(g) Stipulations. Stipulations by any party shall be binding upon that party at trial unless set aside or modified by the court in the interests of justice.

(h) Memorandum. At the conclusion of the hearing, a summary memorandum shall be made indicating disclosure made, rulings and orders of the court, stipulations, and any other matters determined or pending. Such summary memorandum shall be in substantially the following form:

Copy Received Date Filed by Clerk

SUPERIOR COURT OF WASHINGTON
FOR (_____) COUNTY

THE STATE OF WASHINGTON, Plaintiff,	)	No. _____
v.	)	OMNIBUS APPLICATION
_____, Defendant.	)	BY PLAINTIFF AND DEFENDANT

Date _____.

Notice to _____.

Purpose: To prepare for trial or plea and to determine the extent of discovery to be granted to each party.

I

MOTION BY DEFENDANT

Comes now the defendant and makes the applications or motions checked off below:

1. To dismiss for failure of the indictment (of information) to state an offense. Granted _____ Denied _____.
2. To sever defendant's case and for separate trial.
3. To sever counts and for a separate trial.
4. To make more definite and certain.
5. For discovery of all oral, written or recorded statements made by defendant to investigating officers or to third parties and in the possession of the plaintiff.
6. For discovery of the names and addresses of plaintiff's witnesses and their statements.
7. To inspect physical or documentary evidence in plaintiff's possession.
8. To suppress physical evidence in plaintiff's possession because of (1) illegal search, (2) illegal arrest. Hearing set for _____.
9. For a hearing under rule 3.5.
10. To suppress evidence of the identification of the defendant.
11. To take the deposition of witnesses.
12. To secure the appearance of a witness at trial or hearing.
13. To inquire into the conditions of pretrial release. Affirmed _____ Modified to _____.

To Require the Prosecution

14. To state:
    (a) If there was an informer involved;
    (b) Whether he will be called as a witness at the trial; and,
    (c) To state the name and address of the informer or claim the privilege.
15. To disclose evidence in plaintiff's possession, favorable to defendant on the issue of guilt.
16. To disclose whether it will rely on prior acts or convictions of a similar nature for proof of knowledge or intent.
17. To advise whether any expert witness will be called, and if so, supply:
    (a) Name of witness, qualifications and subject of testimony;
    (b) Report.
18. To supply any reports or tests of physical or mental examinations in the control of the prosecution.
19. To supply any reports of scientific tests, experiments, or comparisons and other reports to experts in the control of the prosecution, pertaining to this case.
20. To permit inspection and copying of any books, papers, documents, photographs or tangible objects which the prosecution:
    (a) Obtained from or belonging to the defendant; or
    (b) Which will be used at the hearing or trial.
21. To supply any information known concerning a prior conviction of persons whom the prosecution intends to call as witnesses at the hearing or trial.
22. To inform the defendant of any information he has indicating entrapment of the defendant.

Dated this _____ day of _____, 19____.

_____
Attorney for Defendant

II

MOTION BY PLAINTIFF

The plaintiff makes the application or motions checked:

1. Defendant to state the general nature of his defense.
2. Defendant to state whether or not he will rely on an alibi and, if so, to furnish a list of his alibi witnesses and their addresses. Granted _____ Denied _____.
3. Defendant to state whether or not he will rely on a defense of insanity at the time of the offense.
    (a) If so, defendant to supply the name(s) of his witness(es) on the issue, both lay and professional.
    (b) If so, defendant to permit the prosecution to inspect and copy all medical reports under his control or the control of his attorney.
    (c) Defendant will also state whether or not he will submit to a psychiatric examination by a doctor selected by the prosecution.
4. Defendant to furnish results of scientific tests, experiments or comparisons and the names of persons who conducted the tests.
5. Defendant to appear in a lineup.
6. Defendant to speak for voice identification by witnesses.
7. Defendant to be fingerprinted.
8. Defendant to pose for photographs (not involving a reenactment of the crime).
9. Defendant to try on articles of clothing.
10. Defendant to permit taking of specimens of material under fingernails.
11. Defendant to permit taking samples of blood, hair and other materials of his body which involve no unreasonable intrusion thereof.
12. Defendant to provide samples of his handwriting.
13. Defendant to submit to a physical external inspection of his body.

14. Defendant to state whether there is any claim of incompetency to stand trial.
15. For discovery of the names and addresses of defendant's witnesses and their statements.
16. To inspect physic al or documentary evidence in defendant's possession.
17. To take the deposition(s) of witness(es).
18. To secure the appearance of a witness at trial or hearing.
19. Defendant to state whether his prior convictions will be stipulated or need be proved.
20. Defendant to state whether he will stipulate to the continuous chain of custody of evidence from acquisition to trial.

Dated this _____ day of _____, 19____.

_____
Prosecuting Attorney

It is so ordered this _____ day of _____, 19____.

_____
Judge

Comment

Supersedes RCW 10.46.030 in part.

RULE 4.6
DEPOSITIONS

(a) When Taken. Upon a showing that a prospective witness may be unable to attend or prevented from attending a trial or hearing or if a witness refuses to discuss the case with either counsel and that his testimony is material and that it is necessary to take his deposition in order to prevent a failure of justice, the court at any time after the filing of an indictment or information may upon motion of a party and notice to the parties order that his testimony be taken by deposition and that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place.

(b) Notice of Taking. The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time and may change the place of taking.

(c) How Taken. A deposition shall be taken in the manner provided in civil actions. No deposition shall be used in evidence against any defendant who has not had notice of and an opportunity to participate in or be present at the taking thereof.

(d) Use. Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as witness, or as substantive evidence under circumstances permitted by the Rules of Evidence.

(e) Objections to Admissibility. Objections to receiving in evidence a deposition or part thereof may be made as provided in civil actions.

RULE CrR 4.7
DISCOVERY

(a) Prosecutors Obligations.

(1) Except as otherwise provided by protective orders or as to matters not subject to disclosure, the prosecuting attorney shall disclose to the defendant the following material and information within the prosecuting attorney's possession or control no later than the omnibus hearing:

(i) the names and addresses of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial, together with any written or recorded statements and the substance of any oral statements of such witnesses;

(ii) any written or recorded statements and the substance of any oral statements made by the defendant, or made by a codefendant if the trial is to be a joint one;

(iii) when authorized by the court, those portions of grand jury minutes containing testimony of the defendant, relevant testimony of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial, and any relevant testimony that has not been transcribed;

(iv) any reports or statements of experts made in connection with the particular case, including results of physical or mental examinations and scientific tests, experiments, or comparisons;

(v) any books, papers, documents, photographs, or tangible objects, which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belonged to the defendant; and

(vi) any record of prior criminal convictions known to the prosecuting attorney of the defendant and of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial.

(2) The prosecuting attorney shall disclose to the defendant:

(i) any electronic surveillance, including wiretapping, of the defendant's premises or conversations to which the defendant was a party and any record thereof;

(ii) any expert witnesses whom the prosecuting attorney will call at the hearing or trial, the subject of their testimony, and any reports they have submitted to the prosecuting attorney;

(iii) any information which the prosecuting attorney has indicating entrapment of the defendant.

(3) Except as is otherwise provided as to protective orders, the prosecuting attorney shall disclose to defendant's counsel any material or information within the prosecuting attorney's knowledge which tends to negate defendant's guilt as to the offense charged.

(4) The prosecuting attorney's obligation under this section is limited to material and information within the knowledge, possession or control of members of the prosecuting attorney's staff.

(b) Defendant's Obligations.

(1) Except as is otherwise provided as to matters not subject to disclosure and protective orders, the defendant shall disclose to the prosecuting attorney the following material and information within the defendant's control no later than the omnibus hearing: the names and addresses of persons whom the defendant intends to call as witnesses at the hearing or trial, together with any written or recorded statements and the substance of any oral statements of such witness.

(2) Notwithstanding the initiation of judicial proceedings, and subject to constitutional limitations, the court on motion of the prosecuting attorney or the defendant, may require or allow the defendant to:

(i) appear in a lineup;

(ii) speak for identification by a witness to an offense;

(iii) be fingerprinted;

(iv) pose for photographs not involving reenactment of the crime charged;

(v) try on articles of clothing;

(vi) permit the taking of samples of or from the defendant's blood, hair, and other materials of the defendant's body including materials under the defendant's fingernails which involve no unreasonable intrusion thereof;

(vii) provide specimens of the defendant's handwriting;

(viii) submit to a reasonable physical, medical, or psychiatric inspection or examination;

(ix) state whether there is any claim of incompetency to stand trial;

(x) allow inspection of physical or documentary evidence in defendant's possession;

(xi) state whether the defendant's prior convictions will be stipulated or need to be proved;

(xii) state whether or not the defendant will rely on an alibi and, if so, furnish a list of alibi witnesses and their addresses;

(xiii) state whether or not the defendant will rely on a defense of insanity at the time of the offense;

(xiv) state the general nature of the defense.

(3) Provisions may be made for appearance for the foregoing purposes in an order for pretrial release.

(c) Additional Disclosures Upon Request and Specification. Except as is otherwise provided as to matters not subject to disclosure the prosecuting attorney shall, upon request of the defendant, disclose any relevant material and information regarding:

(1) Specified searches and seizures;

(2) The acquisition of specified statements from the defendant; and

(3) The relationship, if any, of specified persons to the prosecuting authority.

(d) Material Held by Others. Upon defendant's request and designation of material or information in the knowledge, possession or control of other persons which would be discoverable if in the knowledge, possession or control of the prosecuting attorney, the prosecuting attorney shall attempt to cause such material or information to be made available to the defendant. If the prosecuting attorney's efforts are unsuccessful and if such material or persons are subject to the jurisdiction of the court, the court shall issue suitable subpoenas or orders to cause such material to be made available to the defendant.

(e) Discretionary Disclosures.

(1) Upon a showing of materiality to the preparation of the defense, and if the request is reasonable, the court in its discretion may require disclosure to the defendant of the relevant material and information not covered by sections (a), (c) and (d).

(2) The court may condition or deny disclosure authorized by this rule if it finds that there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals or unnecessary annoyance or embarrassment, resulting from such disclosure, which outweigh any usefulness of the disclosure to the defendant.

(f) Matters Not Subject to Disclosure.

(1) Work Product. Disclosure shall not be required of legal research or of records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of investigating or prosecuting agencies except as to material discoverable under subsection (a)(1)(iv).

(2) Informants. Disclosure of an informants identity shall not be required where the informants identity is a prosecution secret and a failure to disclose will not infringe upon the constitutional rights of the defendant. Disclosure of the identity of witnesses to be produced at a hearing or trial shall not be denied.

(g) Medical and Scientific Reports. Subject to constitutional limitations, the court may require the defendant to disclose any reports or results, or testimony relative thereto, of physical or mental examinations or of scientific tests, experiments or comparisons, or any other reports or statements of experts which the defendant intends to use at a hearing or trial.

(h) Regulation of Discovery.

(1) Investigations Not To Be Impeded. Except as is otherwise provided with respect to protective orders and matters not subject to disclosure, neither the counsel for the parties nor other prosecution or defense personnel shall advise persons other than the defendant having relevant material or information to refrain from discussing the case with opposing counsel or showing opposing counsel any relevant material, nor shall they otherwise impede opposing counsels investigation of the case.

(2) Continuing Duty To Disclose. If, after compliance with these rules or orders pursuant thereto, a party discovers additional material or information which is subject to disclosure, the party shall promptly notify the other par ty or their counsel of the existence of such additional material, and if the additional material or information is discovered during trial, the court shall also be notified.

(3) Custody of Materials. Any materials furnished to an attorney pursuant to these rules shall remain in the exclusive custody of the attorney and be used only for the purposes of conducting the party's side of the case, unless otherwise agreed

by the parties or ordered by the court, and shall be subject to such other terms and conditions as the parties may agree or the court may provide. Further, a defense attorney shall be permitted to provide a copy of the materials to the defendant after making appropriate redactions which are approved by the prosecuting authority or order of the court.

(4) Protective Orders. Upon a showing of cause, the court may at any time order that specified disclosure be restricted or deferred, or make such other order as is appropriate, provided that all material and information to which a party is entitled must be disclosed in time to permit the party's counsel to make beneficial use thereof.

(5) Excision. When some parts of certain material are discoverable under this rule, and other parts not discoverable, as much of the material shall be disclosed as is consistent with this rule. Material excised pursuant to judicial order shall be sealed and preserved in the records of the court, to be made available to the appellate court in the event of an appeal.

(6) In Camera Proceedings. Upon request of any person, the court may permit any showing of cause for denial or regulation of disclosure, or portion of such showing, to be made in camera. A record shall be made of such proceedings. If the court enters an order granting relief following a showing in camera, the entire record of such showing shall be sealed and preserved in the records of the court, to be made available to the appellate court in the event of an appeal.

(7) Sanctions.

(i) If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with an applicable discovery rule or an order issued pursuant thereto, the court may order such party to permit the discovery of material and information not previously disclosed, grant a continuance, dismiss the action or enter such other order as it deems just under the circumstances.

(ii) Willful violation by counsel of an applicable discovery rule or an order issued pursuant thereto may subject counsel to appropriate sanctions by the court.

[Amended effective September 1, 1986; September 1, 2005; September 1, 2007.]

Comment Supersedes RCW 10.37.030, .033; RCW 10.46.030 in part.

RULE 4.8
SUBPOENAS

Subpoenas shall be issued in the same manner as in civil actions.

Comment

Supersedes RCW 10.46.030 in part, .050.

RULE 4.9
PRETRIAL CONFERENCE

(RESCINDED)

RULE 4.10
MATERIAL WITNESS

(a) Warrant. On motion of the prosecuting attorney or the defendant, the court may issue a warrant, subject to reasonable bail, for the arrest of a material witness. The warrant shall issue only on a showing, by affidavit or on the record in open court, that the testimony of the witness is material and that

(1) The witness has refused to submit to a deposition ordered by the

court pursuant to rule 4.6; or
(2) The witness has refused to obey a lawfully issued subpoena; or
(3) It may become impracticable to secure the presence of the witness by subpoena.
Unless otherwise ordered by the court, the warrant shall be executed and returned as in rule 2.2.
(b) Hearing. After the arrest of the witness, the court shall hold a hearing no later than the next judicial day after the witness is present in the county from which the warrant issued. The witness shall be entitled to be represented by a lawyer. The court shall appoint a lawyer for an indigent witness if it is required to protect the rights of the witness.
(c) Release/Detention. Upon a determination that the testimony of the witness is material and that one of the conditions set forth in section (a) exists, the court shall set conditions for release of the witness pursuant to rule 3.2. A material witness shall be released unless the court determines that the testimony of such witness cannot be secured adequately by deposition and that further detention is necessary to prevent a failure of justice. Release of a material witness may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to rule 4.6.

RULE 5.1
COMMENCEMENT OF ACTIONS

(a) Where Commenced. All actions shall be commenced:
(1) In the county where the offense was committed;
(2) In any county wherein an element of the offense was committed or occurred.
(b) Two or More Counties. When there is reasonable doubt whether an offense has been committed in one of two or more counties, the action may be commenced in any such county.
(c) Right To Change. When a case is filed pursuant to section (b) of this rule, the defendant shall have the right to change venue to any other county in which the offense may have been committed. Any objection to venue must be made as soon after the initial pleading is filed as the defendant has knowledge upon which to make it.

Comment
Supersedes RCW 10.25.010, .020, .030, .040, .050, .060, .110.

RULE 5.2
CHANGE OF VENUE

(a) When Ordered--Improper County. The court shall order a change of venue upon motion and showing that the action has not been prosecuted in the proper county.
(b) When Ordered--On Motion of Party. The court may order a change of venue to any county in the state:
(1) Upon written agreement of the prosecuting attorney and the defendant;
(2) Upon motion of the defendant, supported by affidavit that he believes he cannot receive a fair trial in the county where the action is pending.
(c) Discharge of Jury. When the court orders a change of venue it shall discharge the jury, if any, without prejudice to the prosecution, and direct that all the papers and proceedings be certified to the superior court of the proper county and direct the defendant and the witnesses to appear at such court.

Comment
Supersedes RCW 10.25.080, .090, .100; RCW 10.46.180.

Comment
RCW 10.46.070 is superseded in part by all of CrR 6.

RULE 6.1
TRIAL BY JURY OR BY THE COURT

(a) Trial by Jury. Cases required to be tried by jury shall be so tried unless the defendant files a written waiver of a jury trial, and has consent of the court.

(b) Number of Jurors. Unless otherwise provided by these rules, the number of persons serving on a jury shall be 12, not including alternates. If prior to trial on a noncapital case all defendants so elect, the case shall be tried by a jury of not less than six, or by the court.

(c) Juror Unable To Continue. If a case has not yet been submitted to the jury and a juror is unable to continue and no alternate jurors were selected or none are available, or if a case has been submitted to the jury and a juror is unable to continue, all defendants may elect to continue with the remaining jurors. The court shall declare a mistrial for any defendant who does not elect to continue with the remaining jurors. If some, but not all, defendants elect to continue with the trial, the court shall proceed with the trial for those defendants unless the court determines manifest necessity requires a mistrial.

(d) Trial Without Jury. In a case tried without a jury, the court shall enter findings of fact and conclusions of law. In giving the decision, the facts found and the conclusions of law shall be separately stated. The court shall enter such findings of fact and conclusions of law only upon 5 days' notice of presentation to the parties.

Comment

Supersedes RCW 10.49.020.

RULE 6.2
JURORS' ORIENTATION

All jurors will be given a general orientation when they report for duty.

(a) Juror Handbook. A copy of the Jurors Handbook to Washington Courts prepared by the Superior Court Judges' Association of the State of Washington and the Washington State Magistrates Association shall be provided to all petit jurors by the court in which they are to serve.

(b) Juror Information Sheet. Prior to the commencement of a petit jurors term of service, a juror information sheet shall be furnished to the juror by the court in which the person is to serve. The format of the information sheet shall be consistent with recommendations of the Administrator for the Courts.

RULE CrR 6.3
SELECTING THE JURY

When the action is called for trial, the jurors shall be selected at random from the jurors summoned who have appeared and have not been excused.

[Amended effective September 1, 1993.]

RULE 6.4
CHALLENGES

(a) Challenges to the Entire Panel. Challenges to the entire panel shall only be sustained for a material departure from the procedures prescribed by law for their selection.

(b) Voir Dire. A voir dire examination shall be conducted for the purpose of discovering any basis for challenge for cause and for the purpose of gaining knowledge to enable an intelligent exercise of peremptory challenges. The judge shall initiate the voir dire examination by identifying the parties and their respective counsel and by briefly outlining the nature of the case. The judge and counsel may then ask the prospective jurors questions touching their qualifications to serve as jurors in the case, subject to the supervision of the court as appropriate to the facts of the case.

(c) Challenges for Cause.

(1) If the judge after examination of any juror is of the opinion that grounds for challenge are present, he or she shall excuse that juror from the trial of the case. If the judge does not excuse the juror, any party may challenge the juror for cause.

(2) RCW 4.44.150 through 4.44.200 shall govern challenges for

cause.

(d) Exceptions to Challenge.
(1) Determination. The challenge may be excepted to by the adverse party for insufficiency and, if so, the court shall determine the sufficiency thereof, assuming the facts alleged therein to be true. The challenge may be denied by the adverse party and, if so, the court shall try the issue and determine the law and the facts.
(2) Trial of Challenge. Upon trial of a challenge, the Rules of Evidence applicable to testimony offered upon the trial of an ordinary issue of fact shall govern. The juror challenged, or any other person otherwise competent, may be examined as a witness by either party. If a challenge be determined to be sufficient, or if found to be true, as the case may be, it shall be allowed, and the juror
to whom it was taken excluded; but if not so determined or found otherwise, it shall be disallowed.

(e) Peremptory Challenges.
(1) Peremptory Challenges Defined. A peremptory challenge is an objection to a juror for which there is no reason given, but upon which the court shall exclude the juror. In prosecutions for capital offenses the defense and the state may challenge peremptorily 12 jurors each; in prosecution for offenses punishable by imprisonment in the state Department of Corrections 6 jurors each; in all other prosecutions, 3 jurors each. When several defendants are on trial together, each defendant shall be entitled to one challenge in addition to the number of challenges provided above, with discretion in the trial judge to afford the prosecution such additional challenges as circumstances warrant.
(2) Peremptory Challenges--How Taken. After prospective jurors have been passed for cause, peremptory challenges shall be exercised alternately first by the prosecution then by each defendant until the peremptory challenges are exhausted or the jury accepted. Acceptance of the jury as presently constituted shall not waive any remaining peremptory challenges to jurors subsequently called.

Comment
Supersedes RCW 10.49.030, .040, .050, .060.
Amended Effective December 26, 2000

RULE 6.5
ALTERNATE JURORS

When the jury is selected the court may direct the selection of one or more additional jurors, in its discretion, to be known as alternate jurors. Each party shall be entitled to one peremptory challenge for each alternate juror to be selected. When several defendants are on trial together, each defendant shall be entitled to one challenge in addition to the challenge provided above, with discretion in the trial judge to afford the prosecution such additional challenges as circumstances warrant. If at any time before submission of the case to the jury a juror is found unable to perform the duties the court shall order the juror discharged, and the clerk shall draw the name of an alternate who shall take the jurors place on the jury.
Alternate jurors who do not replace a regular juror may be discharged or temporarily excused after the jury retires to consider its verdict. When jurors are temporarily excused but not discharged, the trial judge shall take appropriate steps to protect alternate jurors from influence, interference or publicity, which might affect that jurors ability to remain impartial and the trial judge may conduct brief voir dire before seating such alternate juror for any trial or deliberations. Such alternate juror may be recalled at any time that a regular juror is unable to serve, including a second phase of any trial that is bifurcated. If the jury has commenced deliberations prior to replacement of an initial juror with an alternate juror, the jury shall be instructed to disregard all previous deliberations and begin deliberations anew.

Comment
Supersedes RCW 10.49.070.

RULE 6.6
JURORS' OATH

The jury shall be sworn or affirmed well and truly to try the issue

between the State and the defendant, according to the evidence and instructions by the court.

Comment

Supersedes RCW 10.49.100.

RULE 6.7
CUSTODY OF JURY

(a) Generally. During trial and deliberations the jury may be allowed to separate unless good cause is shown, on the record, for sequestration of the jury.

(b) Communication Restricted. Unless the jury is allowed to separate, the jurors shall be kept together under the charge of one or more officers until they agree upon their verdict or are discharged by the court. The officer shall keep the jurors separate from other persons and shall not allow any communication which may affect the case to be made to the jurors, nor make any himself, unless by order of the court, except to ask the jurors if they have agreed upon their verdict. The officer shall not, before the verdict is rendered, communicate to any person the state of the jurors' deliberations or their verdict.

(c) Motions. Any motions or proceedings concerning the separation or sequestration of the jury shall be made out of the presence of the jury.

RULE CrR 6.8
NOTE TAKING BY JURORS

In all cases, jurors shall be allowed to take written notes regarding the evidence presented to them and keep these notes with them during their deliberation. The court may allow jurors to keep these notes with them in the jury room during recesses, in which case jurors may review their own notes but may not share or discuss the notes with other jurors until they begin deliberating. Such notes should be treated as confidential between the jurors making them and their fellow jurors, and shall be destroyed immediately after the verdict is rendered.

[Adopted effective July 1, 1973; amended effective October 1, 2002.]

RULE 6.9
VIEW OF PREMISES BY JURY

The court may allow the jury to view the place in which any material fact occurred. In such event it shall order the jury to be conducted in a body, in the custody of a proper officer of the court to the place which shall be shown to them by the judge. The defendant shall be present at the view. During the view, no person other than the judge or person authorized by him shall speak to the jury on any subject relating to the trial.

RULE 6.10
DISCHARGE OF JURY

The jury may be discharged by the court on consent of both parties or when it appears that there is no reasonable probability of their reaching agreement.

RULE 6.11
JUDGE--DISABILITY

(a) Disability of Judge During Jury Trial. If, before the judge submits the case to the jury, he or she is unable to continue with the trial, any other judge assigned to or regularly sitting in the court, upon becoming familiar with the record of the trial, may proceed with the trial. Upon defendant's objection to the replacement, a mistrial shall be granted. If, after the judge submits the case to the jury, he or she is unable to continue, the case shall proceed before another judge.

(b) Disability of Judge During Nonjury Trial. If a judge before whom trial without jury has commenced is unable to proceed with the trial, a mistrial shall be granted.

Amended Effective December 26, 2000

RULE 6.12
WITNESSES

(a) Who May Testify. Any person may be a witness in any action or proceeding under these rules except as hereinafter provided or as provided in the Rules of Evidence.

(b) When Excused. A witness subpoenaed to attend in a criminal case is dismissed and excused from further attendance as soon as he or she has given his or her testimony in chief and has been cross-examined thereon, unless either party makes requests in open court that the witness remain in attendance; and witness fees will not be allowed any witness after the day on which his or her testimony is given, except when the witness has in open court been required to remain in further attendance, and when so required the clerk shall note that fact in his or her journal.

(c) Persons Incompetent To Testify. The following persons are incompetent to testify: (1) Those who are of unsound mind, or intoxicated at the time of their production for examination; and (2) children who do not have the capacity of receiving just impressions of the facts about which they are examined or who do not have the capacity of relating them truly. This shall not affect any recognized privileges.

(d) Not Excluded on Grounds of Interest. No person offered as a witness shall be excluded from giving evidence by reason of his or her interest in the result of the action, as a party thereto or otherwise, but such interest may be shown to affect his or her credibility.

Comment
See RCW 10.01.130.
Amended Effective December 26, 2000

RULE 6.13
TESTIMONY IN LIEU OF WITNESSES

(a) Deposition. Upon a determination that the testimony of a witness is material, and that it appears probable that the witness will not voluntarily appear at the trial, the court may order the taking of his or her deposition. Pending the taking of the deposition the provisions of CrR 3.2 shall apply.

(b) Test Report by Expert.
(1) Certification Required. Subject to subsection (b)(3) of this rule, the official written report of an expert witness which contains the results of any test of a substance or object which are relevant to an issue in a trial shall be admitted in evidence without further proof or foundation as prima facie evidence of the facts stated in the report if the report bears or has attached a certification stating that the certifier has performed a test on the substance or object in question, the name of the person from whom the substance or object was received, the certificate is attached to a true and complete copy of the certifiers official report, the report was made by the certifier, and the qualifications of the certifier to make such tests. The certificate shall be signed by the certifier with the title of his office and his business address and telephone number.

(2) Form. The certificate shall be in substantially the following form:
The undersigned certifies under penalty of perjury that:
1. He performed a test on the (substance) (object) in

question;
    2. The person from whom he received the (substance) (object) in question is _____;
    3. The document on which this certificate appears or to which it is attached is a true and complete copy of my official report; and
    4. Such document is a report of the results of a test which report and test were made by the undersigned who has the following qualifications and experience:
_____.
_____.

_____
Signature

_____
Title

_____
Business Address and Telephone

    (3) Notice Requirements. The court shall exclude such report if:

    (i) a copy of the report and certificate has not been served on the defendant or the defendant's attorney at least 15 days prior to the trial date or, upon a showing of cause, such lesser time as the court deems proper; or

    (ii) in the case of an unrepresented defendant, a copy of this rule in addition to a copy of the report and certificate has not been served on the defendant at least 15 days prior to the trial date or, upon a showing of cause, such lesser time as the court deems proper; or

    (iii) at least 7 days prior to the trial date or, upon a showing of cause, such lesser time as the court deems proper, the defendant has served a written demand upon the prosecutor to produce the expert witness at the trial.

Amended Effective December 26, 2000

RULE 6.14
IMMUNITY

    In any case the court on motion of the prosecuting attorney may order that a witness shall not be excused from giving testimony or producing any papers, documents or things, on the ground that such testimony may tend to incriminate or subject the witness to a penalty or forfeiture; but the witness shall not be prosecuted or subjected to criminal penalty or forfeiture for or on account of any transaction, matter, or fact concerning which the witness has been ordered to testify pursuant to this rule. The witness may nevertheless be prosecuted for failing to comply with the order to answer, or for perjury or the giving of false evidence.

Amended Effective December 26, 2000

RULE CrR 6.15
INSTRUCTIONS AND ARGUMENT

    (a) Proposed Instructions. Proposed jury instructions shall be served and filed when a case is called for trial by serving one copy upon counsel for each party, by filing one copy with the clerk, and by delivering the original and one additional copy for each party to the trial judge. Additional instructions, which could not be reasonably anticipated, shall be served and filed at any time before the court has instructed the jury.

    Not less than 10 days before the date of trial, the court may order counsel to serve and file proposed instructions not less than 3 days before the trial date.

    Each proposed instruction shall be on a separate sheet of paper. The original shall not be numbered nor include citations of authority.

Any superior court may adopt special rules permitting certain instructions to be requested by number from any published book of instructions.

(b) (Reserved.)

(c) Objection to Instructions. Before instructing the jury, the court shall supply counsel with copies of the proposed numbered instructions, verdict and special finding forms. The court shall afford to counsel an opportunity in the absence of the jury to object to the giving of any instructions and the refusal to give a requested instruction or submission of a verdict or special finding form. The party objecting shall state the reasons for the objection, specifying the number, paragraph, and particular part of the instruction to be given or refused. The court shall provide counsel for each party with a copy of the instructions in their final form.

(d) Instructing the Jury and Argument of Counsel. The court shall read the instructions to the jury. The prosecution may then address the jury after which the defense may address the jury followed by the prosecutions rebuttal.

(e) Deliberation. After argument, the jury shall retire to consider the verdict. The jury shall take with it the instructions given, all exhibits received in evidence and a verdict form or forms.

(f) Questions from Jury During Deliberations.

(1) The jury shall be instructed that any question it wishes to ask the court about the instructions or evidence should be signed, dated and submitted in writing to the bailiff. The court shall notify the parties of the contents of the questions and provide them an opportunity to comment upon an appropriate response. Written questions from the jury, the court's response and any objections thereto shall be made a part of the record. The court shall respond to all questions from a deliberating jury in open court or in writing. In its discretion, the court may grant a jury's request to rehear or replay evidence, but should do so in a way that is least likely to be seen as a comment on the evidence, in a way that is not unfairly prejudicial and in a way that minimizes the possibility that jurors will give undue weight to such evidence. Any additional instruction upon any point of law shall be given in writing.

(2) After jury deliberations have begun, the court shall not instruct the jury in such a way as to suggest the need for agreement, the consequences of no agreement, or the length of time a jury will be required to deliberate.

(g) Several Offenses. The verdict forms for an offense charged or necessarily included in the offense charged or an attempt to commit either the offense charged or any offense necessarily included therein may be submitted to the jury.

[Amended effective January 2, 1974; September 1, 1986; amended effective October 1, 2002]

RULE 6.16
VERDICTS AND FINDINGS

(a) Verdicts.

(1) Several Defendants. If there are two or more defendants, the jury at any time during its deliberations may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed; if a jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

(2) Return of Verdict. When all members of the jury agree upon a verdict, the presiding juror shall complete and sign the verdict form and return it to the judge in open court.

(3) Poll of Jurors. When a verdict or special finding is returned and before it is recorded, the jury shall be polled at the request of any party or upon the court's own motion. If at the conclusion of the poll, all of the jurors do not concur, the jury may be directed to retire for further deliberations or may be discharged by the court.

(b) Special Findings. The court may submit to the jury forms for such special findings which may be required or authorized by law. The court shall give such instruction as may be necessary to enable the jury both to make these special findings or verdicts

and to render a general verdict. When a special finding is inconsistent with another special finding or with the general verdict, the court may order the jury to retire for further consideration.

(c) Forms.
(1) Verdict. The verdict of the jury may be in substantially the following form:

We, the jury, find the defendant guilty (or not guilty) of the crime of _____ as charged in count number _____.

_____
Signature of Presiding Juror

(2) Special Findings. Special findings may be substantially in the following form:

Was the defendant ____(name)____ armed with a deadly weapon at the time of the commission of the crime charged in count number _____
Yes ( ) No ( )

Comment
Supersedes RCW 10.61.030, .035 in part, .040, .050.
Amended Effective December 26, 2000

RULE CrR 7.1
PROCEDURES BEFORE SENTENCING

(a) Generally. At the time of, or within 3 days after, a plea, finding, or verdict of guilt of a felony, the court may order that a risk assessment or presentence investigation and report be prepared by the Department of Corrections, when authorized by law. The court shall also then:

(1) Set a date, time, and place for sentencing in compliance with the time requirements of RCW 9.94A.500;

(2) Order the defendant to return at the designated date, time, and place; and

(3) Set a date at least 10 days before sentencing for delivery of the risk assessment or presentence report, if any, to the court, to the prosecuting attorney, and to the defendant or defense counsel.

(b) Report. The report of the presentence investigation shall contain the defendant's criminal history, as defined by RCW 9.94A.030, such information about the defendant's characteristics, financial condition, and the circumstances affecting the defendant's behavior as may be relevant in imposing sentence or in the correctional treatment of the defendant, information about the victim, and such other information as may be required by the court.

(c) Notice of New Evidence. At least 3 days before the sentencing hearing, defense counsel and the prosecuting attorney shall notify opposing counsel and the court of any part of the presentence report that will be controverted by the production of evidence.

(d) Other Reports. Any interested person, as designated in RCW 9.94A.500, may submit a report separate from that furnished by the Department of Corrections.

Comment
The rule is designed to implement RCW 9.94A.110 and related statutes concerning the sentencing procedure. The entire rule is new; it replaces the prior CrR 7.2, Presentence Investigation, portions of which are incorporated into the new rule.

Section (a) is adapted from Minn. R. Crim. P. 27.03. The rule states that the court may order a presentence investigation and report, giving the court a measure of discretion to dispense with a report when the appropriate sentence can readily be determined on the basis of the sentencing guidelines score sheet. The rule codifies the existing practice of requiring the writer of the report to send copies to counsel and to the court.

Section (b) is substantially the same as the prior rule, CrR

7.2(b). The reference in the prior rule to the defendant's "prior criminal record" is replaced by a reference to the defendant's "criminal history" in order to parallel the statutory language.

The reference to "helpful" information is replaced by a reference to "relevant" information because much of what is "helpful" under the prior rule will become irrelevant under a system of presumptive sentencing.

Section (c) ensures that both parties will receive reasonable notice of any intent to controvert the presentence report by the production of new evidence. The combined effect of sections (a)(3) and (c) is that each party will have 7 days to examine the report before giving the required notice.

Section (d) makes it clear that persons who are permitted under RCW 9.94A.110 to present "argument" at sentencing may do so in writing.

Unlike the prior rule, CrR 7.2(c), the rule contains no provision concerning the nondisclosure of "harmful" portions of the presentence report. The Commission concluded that the provision was no longer necessary because much of what might be "harmful" under the prior rule will no longer be relevant under presumptive sentencing and will not be included in the report. If a report under the presumptive sentencing system does contain information that the court believes should be kept confidential, the court may fashion an appropriate remedy on a case-by-case basis.

[Amended effective July 1, 1984; September 1, 1986; Amended effective February 2, 2006.]

RULE 7.2
SENTENCING

(a) Generally. The court shall state the precise terms of the sentence and shall assure that the record accurately reflects all time spent in custody in connection with the offense or behavioral incident for which sentence is imposed. Pending such action the court may release or commit the defendant, pursuant to rule 3.2.

(b) Procedure at Time of Sentencing. The court shall, immediately after sentencing, advise the defendant: (1) of the right to appeal the conviction; (2) of the right to appeal a sentence outside the standard sentence range; (3) that unless a notice of appeal is filed within 30 days after the entry of the judgment or order appealed from, the right to appeal is irrevocably waived; (4) that the superior court clerk will, if requested by the defendant appearing without counsel, supply a notice of appeal form and file it upon completion by the defendant; (5) of the right, if unable to pay the costs thereof, to have counsel appointed and portions of the trial record necessary for review of assigned errors transcribed at public expense for an appeal; and (6) of the time limits on the right to collateral attack imposed by RCW 10.73.090 and .100. These proceedings shall be made a part of the record.

(c) Record. A verbatim record of the sentencing proceedings shall be made.

(d) Judgment and Sentence. For every felony sentencing, the clerk of the court shall forward a copy of the uniform judgment and sentence to the Sentencing Guidelines Commission. The uniform judgment and sentence shall be a form prescribed by the Administrator for the Courts in conjuction with the Supreme Court Pattern Forms Committee. If the sentence imposed departs from the applicable standard sentence range, the court's written findings of fact and conclusions of law shall also be supplied to the Commission.

Comment

The prior rule, CrR 7.1, is adopted as CrR 7.2.

In section (a), the added language is suggested by Minn. R. Crim. P. 27.03. The deleted language addressed matters that are now covered in more detail in RCW 9.94A.110.

Section (b) is the same as the corresponding section in the prior rule, except that subsections (1) and (2) are modified to reflect the provisions of RCW 9.94A.210.

Section (c), concerning the withdrawal of a guilty plea, is deleted. In the existing rules, the point is covered in both CrR 4.2 and CrR 7.1. (See rule 4.2.) The language of the two provisions differs, but they appear to be the same in substance. There is no apparent distinction between the two provisions in the cases that have interpreted them. No loss of substance occurs when the provision in CrR 7.1 is deleted, leaving the point governed by CrR 4.2.

Section (c) is suggested by Minn. R. Crim. P. 27.03.
Section (d) is suggested by Minn. R. Crim. P. 27.03.

RULE 7.3
JUDGMENT

A judgment of conviction shall set forth whether defendant was represented by counsel or made a valid waiver of counsel, the plea, the verdict or findings, and the adjudication and sentence. The court may order that its sentence include special conditions or requirements, including a specified schedule for the payment of a fine, restitution, or other costs, or the performance of community service. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the clerk.

Comment

The rule codifies the existing practice allowing the court to impose special conditions on its sentence. The rule makes it clear that special conditions, including a specified schedule, may likewise be imposed with respect to an order for community service, restitution, or costs. (See RCW 9.94A.200, referring to terms and conditions of restitution.)

The rule is, of course, subject to any statutory restrictions on the court's sentencing authority. For example, a statute requires that a sentence of confinement for more than 60 days must be served on consecutive days (RCW 9.94A.120). The rule would not permit the court to order that such a sentence be served on intermittent days.

RULE 7.4
ARREST OF JUDGMENT

(a) Arrest of Judgments. Judgment may be arrested on the motion of the defendant for the following causes: (1) Lack of jurisdiction of the person or offense; (2) the indictment or information does not charge a crime; or (3) insufficiency of the proof of a material element of the crime.

(b) Time for Motion; Contents of Motion. A motion for arrest of judgment must be served and filed within 10 days after the verdict or decision. The court on application of the defendant or on its own motion may in its discretion extend the time until such time as judgment is entered.

The motion for arrest of judgment shall identify the specific reasons in fact and law as to each ground on which the motion is based.

(c) New Charges After Arrest of Judgments. When judgment is arrested and there is reasonable ground to believe that the defendant can be convicted of an offense properly charged, the court may order the defendant to be recommitted or released to answer a new indictment or information. If judgment was arrested because there was no proof of a material element of the crime the defendant shall be dismissed.

(d) Rulings on Alternative Motions in Arrest of Judgment or for a New Trial. Whenever a motion in arrest of a judgment and, in the alternative, for a new trial is filed and submitted in any superior court in any criminal cause tried before a jury, and the superior court enters an order granting the motion in arrest of judgment, the court shall, at the same time, in the alternative, pass upon and decide in the same order the motion for a new trial. The ruling upon the motion for a new trial shall not become effective unless and until the order granting the motion in arrest of judgment is reversed, vacated, or set aside in the manner provided by law.

RULE 7.5
NEW TRIAL

(a) Grounds for New Trial. The court on motion of a defendant may grant a new trial for any one of the following causes when it affirmatively appears that a substantial right of the defendant was materially affected:

(1) Receipt by the jury of any evidence, paper, document or book not allowed by the court;

(2) Misconduct of the prosecution or jury;

(3) Newly discovered evidence material for the defendant, which the defendant could not have discovered with reasonable

diligence and produced at the trial;
(4) Accident or surprise;
(5) Irregularity in the proceedings of the court, jury or prosecution, or any order of court, or abuse of discretion, by which the defendant was prevented from having a fair trial;
(6) Error of law occurring at the trial and objected to at the time by the defendant;
(7) That the verdict or decision is contrary to law and the evidence;
(8) That substantial justice has not been done. When the motion is based on matters outside the record, the facts shall be shown by affidavit.

(b) Time for Motion; Contents of Motion. A motion for new trial must be served and filed within 10 days after the verdict or decision. The court on application of the defendant or on its own motion may in its discretion extend the time. The motion for a new trial shall identify the specific reasons in fact and law as to each ground on which the motion is based.

(c) Time for Affidavits. When a motion for a new trial is based upon affidavits they shall be served with the motion. The prosecution has 10 days after such service within which to serve opposing affidavits. The court may extend the period for submitting affidavits to a time certain for good cause shown or upon stipulation.

(d) Statement of Reasons. In all cases where the court grants a motion for a new trial, it shall, in the order granting the motion, state whether the order is based upon the record or upon facts and circumstances outside the record which cannot be made a part thereof. If the order is based upon the record, the court shall give definite reasons of law and facts for its order. If the order is based upon matters outside the record, the court shall state the facts and circumstances upon which it relied.

(e) Disposition of Motion. The motion shall be disposed of before judgment and sentence or order deferring sentence.

RULE 7.6
PROBATION

(a) Probation. After conviction of an offense the defendant may be placed on probation as provided by law.

(b) Revocation of Probation. The court shall not revoke probation except after a hearing in which the defendant shall be present and apprised of the grounds on which such action is proposed. The defendant is entitled to be represented by counsel and may be released pursuant to CrR 3.2 pending such hearing. Counsel shall be appointed for a defendant financially unable to obtain counsel.

RULE 7.7
POST-CONVICTION RELIEF

(RESCINDED)

RULE CrR 7.8
RELIEF FROM JUDGMENT OR ORDER

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RAP 7.2(e).

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party from a final judgment, order, or proceeding for the following reasons:

(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;

(2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 7.5;

(3) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(4) The judgment is void; or

(5) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time and for reasons (1) and (2) not more than 1 year after the judgment, order, or proceeding was entered or taken, and is further subject to RCW 10.73.090, .100, .130, and .140. A motion under section (b) does not affect the finality of the judgment or suspend its operation.

(c) Procedure on Vacation of Judgment.

(1) Motion. Application shall be made by motion stating the grounds upon which relief is asked, and supported by affidavits setting forth a concise statement of the facts or errors upon which the motion is based.

(2) Transfer to Court of Appeals. The court shall transfer a motion filed by a defendant to the Court of Appeals for consideration as a personal restraint petition unless the court determines that the motion is not barred by RCW 10.73.090 and either (i) the defendant has made a substantial showing that he or she is entitled to relief or (ii) resolution of the motion will require a factual hearing.

(3) Order to Show Cause. If the court does not transfer the motion to the Court of Appeals, it shall enter an order fixing a time and place for hearing and directing the adverse party to appear and show cause why the relief asked for should not be granted.

[Adopted effective September 1, 1986; amended effective September 1, 1991; June 24, 2003; September 1, 2007.]

RULE 8.1
TIME

Time shall be computed and enlarged in accordance with CR 6.

RULE 8.2
MOTIONS

Rules 3.5 and 3.6 and CR 7(b) shall govern motions in criminal cases.

CrR 8.3
DISMISSAL

(a) On Motion of Prosecution. The court may, in its discretion, upon written motion of the prosecuting attorney setting forth the reasons therefor, dismiss an indictment, information or complaint.

(b) On Motion of Court. The court, in the furtherance of justice, after notice and hearing, may dismiss any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial. The court shall set forth its reasons in a written order.

(c) On Motion of Defendant for Pretrial Dismissal. The defendant may, prior to trial, move to dismiss a criminal charge due to insufficient evidence establishing a prima facie case of the crime charged.

(1) The defendant's motion shall be in writing and supported by an affidavit or declaration alleging that there are no material disputed facts and setting out the agreed facts, or by a stipulation to facts by both parties. The

stipulation, affidavit or declaration may attach and incorporate police reports, witness statements or other material to be considered by the court when deciding the motion to dismiss. Any attached reports shall be redacted if required under the relevant court rules and statutes.

(2) The prosecuting attorney may submit affidavits or declarations in opposition to defendant's supporting affidavits or declarations. The affidavits or declarations may attach and incorporate police reports, witness statements or other material to be considered by the court when deciding defendant's motion to dismiss. Any attached reports shall be redacted if required under the relevant court rules and statutes.

(3) The court shall grant the motion if there are no material disputed facts and the undisputed facts do not establish a prima facie case of guilt. In determining defendant's motion, the court shall view all evidence in the light most favorable to the prosecuting attorney and the court shall make all reasonable inferences in the light most favorable to the prosecuting attorney. The court may not weigh conflicting statements and base its decision on the statement it finds the most credible. The court shall not dismiss a sentence enhancement or aggravating circumstance unless the underlying charge is subject to dismissal under this section. A decision denying a motion to dismiss under this rule is not subject to appeal under RAP 2.2. A defendant may renew the motion to dismiss if the trial court subsequently rules that some or all of the prosecuting attorney's evidence is inadmissible.

(4) If the defendant's motion to dismiss is granted, the court shall enter a written order setting forth the evidence relied upon and conclusions of law. The granting of defendant's motion to dismiss shall be without prejudice.

[Amended effective September 1, 1995; September 1, 2008.]

Comment
Supersedes RCW 10.46.090.

RULE 8.4
SERVICE, FILING, AND SIGNING OF PAPERS

CR 5 shall govern service and filing of written motions (except those heard ex parte) in criminal causes. All pleadings, motions, and legal memoranda signed by an attorney shall include the attorney's Washington State Bar Association membership number in the signature block.

RULE 8.5
CALENDARS

In setting cases for trial, unless otherwise provided by statute, preference shall be given to criminal over civil cases, and criminal cases where the defendant or a witness is in confinement shall have preference over other criminal cases.

RULE 8.6
EXCEPTIONS UNNECESSARY

CR 46 shall govern exceptions to rulings and orders in criminal cases.

RULE 8.7
OBJECTIONS

Objections in criminal causes shall be taken as in civil causes.

RULE 8.8
DISCHARGE

Upon acquittal, or whenever the court shall direct any criminal prosecution to be dismissed, the defendant shall be released from custody or conditions of release on such charge and any bail shall be exonerated.

Comment

Supersedes RCW 10.64.090.

CrR 8.9

CHANGE OF JUDGE

Any right under RCW 4.12.050 to seek disqualification of a judge will be deemed waived unless, in addition to the limitations in the statute, the motion and affidavit is filed with the court no later than thirty days prior to trial before a preassigned judge. If a case is reassigned to a different judge less than forty days prior to trial, a party may then move for a change of judge within ten days of such reassignment, unless the moving party has previously made such a motion.

Special Proceedings Rules -- Criminal
SPRC

TABLE OF RULES

SPRC 1
SCOPE OF RULES

(a) Except as otherwise stated, these rules apply to all stages of proceedings in criminal cases in which the death penalty has been or may be decreed. These rules do not apply in any case in which imposition of the death penalty is no longer possible.

(b) Except when inconsistent with these rules, the Superior Court Criminal Rules and the Rules of Appellate Procedure shall continue to apply in capital cases.

[Adopted effective December 30, 1997; amended effective January 1, 2003.]

SPRC 2
APPOINTMENT OF COUNSEL

At least two lawyers shall be appointed for the trial and also for the direct appeal. The trial court shall retain responsibility for appointing counsel for trial. The Supreme Court shall appoint counsel for the direct appeal. Notwithstanding RAP 15.2(f) and (h), the Supreme Court will determine all motions to withdraw as counsel on appeal.

A list of attorneys who meet the requirements of proficiency and experience, and who have demonstrated that

they are learned in the law of capital punishment by virtue of training or experience, and thus are qualified for appointment in death penalty trials and for appeals will be recruited and maintained by a panel created by the Supreme Court. All counsel for trial and appeal must have demonstrated the proficiency and commitment to quality representation which is appropriate to a capital case. Both counsel at trial must have five years' experience in the practice of criminal law be familiar with and experienced in the utilization of expert witnesses and evidence, and not be presently serving as appointed counsel in another active trial level death penalty case. One counsel must be, and both may be, qualified for appointment in capital trials on the list, unless circumstances exist such that it is in the defendant's interest to appoint otherwise qualified counsel learned in the law of capital punishment by virtue of training or experience. The trial court shall make findings of fact if good cause is found for not appointing list counsel.

At least one counsel on appeal must have three years' experience in the field of criminal appellate law and be learned in the law of capital punishment by virtue of training or experience. In appointing counsel on appeal, the Supreme Court will consider the list, but will have the final discretion in the appointment of counsel.

Comment

If the period of time for filing the death notice has passed, and the death notice has not been filed, the court may then reduce the number of attorneys to one to proceed with the murder trial.

[Adopted effective December 30, 1997; amended effective January 1, 2003.]

SPRC 3

COURT REPORTERS; FILING OF NOTES

(a) At the commencement of a capital case, the trial court will designate one or more court reporters for that case. To the extent practical, only designated reporters will report all hearings.

(b) As soon as possible after each hearing, the court reporter will transmit stenographic notes, any audio or video tapes, and any other electronic data medium containing notes of the hearing to the courtroom clerk.

(c) The courtroom clerk will index the notes on a records inventory, noting the date of the notes. The courtroom clerk will have the court reporter initial the inventory log as each set of notes is received by the courtroom clerk.

(d) The stenographic notes, any audio or video tapes, and any other electronic data medium containing notes of any hearing shall be stored by the clerk's office in an exhibit box labeled with the defendant's name and cause number to allow easy retrieval of notes. Sealed notes are to be marked "SEALED" in red ink and maintained in accordance with GR 15.

(e) Court reporter notes, any audio or video tapes, and any other electronic data medium containing notes of any hearing, sealed or unsealed, shall not be provided to anyone except the court reporter who produced the notes, unless a court order provides otherwise.

(f) A court reporter may withdraw the stenographic notes, any video or audio tapes, and any other electronic data medium containing notes of a hearing as required for transcription upon completing a request slip. The stenographic notes, any audio or video tapes, and any other electronic data medium containing notes shall be returned to the clerk's office at the same time the transcript is filed for transmission to an appellate court.

SPRC 4

DISCOVERY - SPECIAL SENTENCING PROCEEDING

Before the guilt phase of the trial begins, pursuant to

a schedule set by the court, both parties shall provide discovery, pursuant to CrR 4.7(a) and (b) of evidence that they anticipate offering at the special sentencing proceeding. The trial court has discretion, in accordance with CrR 4.7(h)(4), to defer disclosure of all or part of the defendant's penalty phase evidence until the guilt phase has been completed. This discovery shall, if necessary, be supplemented pursuant to CrR 4.7(h)(2).

SPRC 5

MENTAL EXAMINATION OF DEFENDANT

(a) If the defendant may offer at the special sentencing proceeding expert testimony concerning his or her mental condition, the defendant shall notify the prosecuting attorney at least 30 days prior to the start of jury selection. This time may be extended by the court for good cause.

(b) If the defendant has provided such notification, the court, on motion of the prosecuting attorney, shall enter an order requiring the defendant to submit to examination by one or more experts designated by the prosecuting attorney. The court shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made. The defendant may have a representative present at the examination, who may observe the examination but not interfere with or otherwise obstruct the examination. Unless otherwise ordered by the court, the defendant or the defendant's representative may make an audio tape recording of the examination, which shall be made in an unobtrusive manner.

(c) By the date set by the court, the defendant or the defendant's attorney shall provide the State's experts with any reports generated by defense experts, all raw data relied on, and any test results. The information given to the experts shall be supplemented whenever new materials become available.

(d) If the State's expert believes that the material provided by the defendant is inadequate for a proper evaluation, the expert may request the court to require that further materials be provided. If the defendant fails to cooperate with the examination, the expert may request the court to require the defendant to answer specific questions or participate in specific tests. The court shall consider these requests at a closed hearing. The defendant and his or her attorneys shall be given an opportunity to be heard. The prosecuting attorney shall not be allowed to participate. The record of the hearing shall be sealed as provided in subsection (f).

(e) On completing the examination, the prosecution expert shall submit a report setting out the tests performed and their results, the conclusions reached by the expert, and the basis for those conclusions. The report shall be provided to the defendant's attorney and filed with the court.

(f) The expert's report and materials connected with it shall be sealed. The expert shall not discuss his or her conclusions or any information connected with the examination with anyone, other than the defendant's attorneys or other experts whose participation is necessary for a proper examination. Any such experts shall be under the same restrictions.

(g) Within 24 hours after a jury returns a verdict finding a defendant guilty of aggravated murder in the first degree, the court will require the defendant to elect whether he or she may present expert testimony at the special sentencing proceeding concerning his or her mental condition. If the defendant elects not to present such testimony, the report shall remain permanently sealed, the restrictions set out in subsection (f) shall remain permanently in effect, and the State shall be permanently prohibited from direct or derivative use against the defendant of the report or of materials or information provided to the expert. If the defendant elects to present such testimony, the court shall provide a copy of the experts' reports to the prosecuting attorney and shall relieve the experts of the restrictions. The prosecuting attorney may use information obtained from the expert solely to rebut expert testimony offered by the defense at the special sentencing proceeding.

(h) If, in any subsequent proceeding related to the crimes for which the defendant was convicted, the defendant

places his or her mental status in issue, the court may direct that relevant portions of the experts' reports be disclosed to the prosecuting attorney and that the experts shall discuss those portions with the prosecuting attorney.

SPRC 6

PROPORTIONALITY QUESTIONNAIRES

(a) Within 14 days after the entry of a judgment and sentence convicting a defendant of aggravated first degree murder, the prosecuting attorney and the defendant's attorney shall each complete a proposed questionnaire in the form specified in RCW 10.95.120. The proposed questionnaires shall be filed with the clerk of the trial court. Copies shall be provided to the court and served on the opposing attorney.

(b) The court shall consider the proposed questionnaires and all other information in the record. No hearing shall be held unless the court so directs. Within 30 days after the entry of the judgment and sentence, the court shall complete a final questionnaire. The questionnaire shall be submitted to the clerk of the Supreme Court, to the defendant or his or her attorney, and to the prosecuting attorney.

(c) Statements made by an attorney in a proposed questionnaire shall not be considered admissions. Statements made by the court in the final questionnaire shall not be considered findings of fact. The proposed questionnaires and the final questionnaire shall not be used by the parties or the courts for any purpose in connection with the case to which they pertain or any collateral proceeding involving the same defendant. They shall be used only in other cases, for the purpose of making the determination required by RCW 10.95.130(2).

(d) In any brief or memorandum, a questionnaire may be cited in the following format: first and last name of defendant, questionnaire number, county of conviction, year of sentencing. For example: "John Doe, no. 9 (Snohomish, 1982)."

SPRC 7

DESTRUCTION OF RECORDS, EXHIBITS, AND STENOGRAPHIC NOTES

No records, exhibits, or stenographic notes shall be considered for destruction in a case in which the death penalty has been imposed while the defendant is still alive. Before destroying any records, exhibits, or notes in a capital case, the clerk will provide 60 days notice by certified mail, return receipt requested, to the prosecuting attorney, to the defendant's last known attorney of record, and to the defendant. To allow this notice, an attorney who represents the defendant in any challenge to the conviction should notify the clerk of the trial court of the fact of representation and the attorney's current address. Such notification does not constitute an appearance for any purpose other than receiving notice under this rule.

SUPERIOR COURT
MENTAL PROCEEDINGS RULES (MPR)

TABLE OF RULES

INTRODUCTION

The following rules have been designed and promulgated to give full force and effect to Laws of 1973, 1st Ex. Sess., ch. 142. Any future amendments which may be enacted will be dealt with in rules as the need may arise.

Section 62 of the act directs the Supreme Court to adopt rules with respect to court procedures and proceedings. Adoption of these rules is not to be construed as approval of what could be a breach of the separation of powers of government. While the Legislature may recommend rulemaking as to particular matters, it may not mandate rulemaking which is an inherent power of the judicial branch.

Although the courts generally do not pass upon the wisdom or the workability of statutes, they are concerned with their constitutionality. The adoption of these rules, which are merely designed to give effect to the statute as it is written, does not in any manner indicate an opinion of the court that the statute is or is not constitutional in any respect. In promulgating them, the court does not in any manner obviate further consideration of any portion of the statute or these rules in a proper case.

Because of the complicated nature of the statute necessitating these rules and the need that they be effective January 1, 1974, the court has promulgated them without submitting them for comment, and now invites comment from the bench and bar.

RULE 1.1
NOTICE--GENERAL

Whenever any notice or document pursuant to the provisions of RCW 71.05 is required to be served on a person who is detained or committed, such

notice or document shall be provided to the person's attorney, guardian, if any, and, if the person is under 18 years of age, to any person, entity, or institution having actual custody, in addition to any other person provided by statute.

(a) Notice to Prosecutor. In any judicial proceeding under RCW 71.05 for involuntary commitment or detention in which the prosecuting attorney is required to represent a party (see RCW 71.05.130), the prosecuting attorney for the county in which the proceeding is initiated shall be served with written notice of the proceedings and copies of the initiating papers by the party initiating the proceedings.

(b) Notice to Attorney General. In any judicial proceeding under RCW 71.05 for involuntary commitment or detention in which the Attorney General is required to represent a party (see RCW 71.05.130), the Attorney General shall be served with written notice of the proceedings and copies of the initiating papers by the party initiating the proceedings.

(c) Notice of Release. Whenever a person committed or detained under RCW 71.05 is released or conditionally released, the court ordering such commitment shall be notified immediately in writing of the release by the superintendent or professional person in charge of the facility from which the person is released.

RULE 1.2
CONTINUANCE OR POSTPONEMENT

In any judicial proceeding for involuntary commitment or detention held pursuant to RCW 71.05 the court may continue or postpone such proceeding for a reasonable time, subject to RCW 71.05.210 and RCW 71.05.240, on the following grounds:

(a) On motion of the respondent if there is a showing of good cause;

(b) On motion of the prosecuting attorney or the Attorney General if:

(1) The respondent expressly consents to a continuance or delay and there is a showing of good cause; or

(2) Required in the proper administration of justice and the respondent will not be substantially prejudiced in the presentation of respondent's case.

(c) The court on its own motion may continue the case when required in the due administration of justice and when the respondent will not be substantially prejudiced in the presentation of his case.

An order granting continuance shall state whether detention will be extended and the grounds therefor.

RULE 1.3
CONFIDENTIALITY OF PROCEEDINGS

Proceedings had pursuant to RCW 71.05 shall not be open to the public, unless the person who is the subject of the proceedings or his attorney files with the court a written request that the proceedings be public. The court in its discretion may permit a limited number of persons to observe the proceedings as a part of a training program of a facility devoted to the healing arts or of an accredited educational institution within the state.

RULE 1.4
ALTERNATIVE LESS RESTRICTIVE TREATMENT

(a) As an alternative to detention, where the court makes a finding or a special verdict is returned that the respondent should receive less restrictive alternative treatment, the court may order such less restrictive alternative treatment for no longer than the period for which the respondent could have been committed at the hearing.

(b) If the court orders less restrictive alternative treatment, the order shall specify the terms and conditions of the alternative treatment and a copy shall be delivered to the respondent.

(c) If the conditions of the alternative treatment are not adhered to, the designated mental health professional may order the respondent apprehended according to the procedure defined by rules 4.1 through 4.5.

RULE 2.1
SUMMONS

The summons issued pursuant to RCW 71.05.150 shall include the following:

(a) The date and time for appearance, not less than 24 hours from the time at which the summons is served, at an evaluation and treatment facility.

(b) The address of the evaluation and treatment facility.

(c) The business address and business telephone number of the designated mental health professional.

(d) A statement that the person summoned may be detained at the evaluation and treatment facility for up to 72 hours excluding Saturdays, Sundays, and holidays.

(e) A statement whether the 72-hour evaluation period is on outpatient or inpatient status.

(f) A statement that if the person summoned fails to appear at the evaluation and treatment facility on or before the date and time indicated, he may be taken into custody.

(g) A statement that an attorney will be appointed for the person summoned unless the person has retained his own attorney.

(h) The name, business address and business telephone number of the designated attorney.

(i) The summons shall be in substantially the following form:

THE STATE OF WASHINGTON TO (name of person to be detained):

It is alleged that because of mental disorder you present a likelihood of serious harm to yourself, other persons, or the property of other persons, or are gravely disabled.

You are hereby required to appear in person at (address of evaluation and treatment facility) in (city), Washington, on or before (hour) on (month, day, year) for evaluation and possible treatment. You may be detained without court order for evaluation and possible treatment for not more than 72 hours, not including Saturdays, Sundays, or holidays. If you fail to appear in person on or before the date stated above, you may be taken into custody.

You have the right to have an attorney. (Name, address, telephone number) will be appointed as your attorney unless you make arrangements to be represented by another attorney.

Dated this _____ day of _____, 19____.

(Signed) _____
Mental Health Professional
(name) County, Washington
Address: _____
Telephone: _____

RULE 2.2
AUTHORIZATION AND NOTICE OF DETENTION

At the time when any person is taken into custody or as soon as possible thereafter pursuant to RCW 71.05.150(1)(d) or RCW 71.05.150(2) regardless of whether a summons has been issued pursuant to rule 2.1 written authorization to do so shall be served upon such person. A copy of the authorization and a notice of detention shall be filed with the court. The authorization and notice of detention shall include:

(a) The name of the person to be taken into custody.

(b) A statement that the person authorized to take custody is authorized pursuant to RCW 71.05.150(1)(d) or RCW 71.05.150(2).

(c) A statement that the person is to be taken into custody for the purpose of delivering that person to an evaluation and treatment facility for a period of up to 72 hours excluding Saturdays, Sundays, and holidays. The 72-hour period begins when the evaluation and treatment facility provisionally accepts the person as provided in RCW 71.05.170.

(d) A statement specifying the name and location of the evaluation and treatment facility where such person will be detained.

(e) The authorization and notice of detention shall be in substantially the following form:

TO: ANY PEACE OFFICER OR MENTAL HEALTH PROFESSIONAL

(Name of person) ____ has failed to appear in response to summons issued by me pursuant to RCW 71.05.150 a copy of which is attached, or ____ as a result of mental disorder:

____ presents an imminent likelihood of serious harm to him/herself
____ presents an imminent likelihood of serious harm to others
____ presents an imminent likelihood of serious harm to the property of others
____ is in imminent danger because he/she is gravely disabled

You are notified to take or to cause such person to be taken into custody forthwith and placed in (name and location of evaluation and treatment facility) for evaluation and treatment for not more than 72 hours, or for such additional time as a court may order. The 72-hour period

begins when the person is provisionally accepted at the evaluation and treatment facility and excludes Saturdays, Sundays, and holidays.

Dated: _____ (signed) _____
Mental Health Professional
(name) County, Washington

Respondent has been detained in (name and location of evaluation and treatment facility).

Dated: _____ Time: _____
(signed) _____
___ Peace Officer or ___ Mental Health Professional, (name) County, Washington

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RULE 2.2A
NOTICE OF EMERGENCY DETENTION

The notice of emergency detention required to be filed with the court and served upon the designated attorney of the detained person pursuant to RCW 71.05.160 shall include a statement specifying the name and location of the evaluation and treatment facility where the person taken into custody has been detained.

The notice of emergency detention shall be in substantially the following form:

(Respondent) has been detained in (name of evaluation and treatment facility).

Dated: _____ Time of provisional acceptance:
(signed) _____
Mental Health Professional
(name) County, Washington

RULE 2.3
RIGHT TO COPY COURT FILES

Prior to and at the hearing provided for in RCW 71.05.200, 71.05.240, and 71.05.250, the attorney for any detained person who will be a respondent at such hearing shall be permitted to view and copy all documents relating to the detained person which have been filed with the court.

RULE 2.4
PROBABLE CAUSE HEARING

(a) Notice. If notice to the court and the prosecuting attorney of the probable cause hearing as required by RCW 71.05.150(1)(c) includes the date and time of the provisional acceptance of any person involuntarily detained, no additional notice to the court shall be required pursuant to RCW 71.05.170.

(b) Procedure.

(1) The probable cause hearing provided in RCW 71.05.200(1) shall be held in accordance with the provisions of RCW 71.05.200(1), 71.05.240, and 71.05.250, except that under the circumstances defined by RCW 10.77.090, the prosecuting attorney may be the petitioner.

(2) The probable cause hearing shall proceed as in other civil actions, except that the court, in its discretion, may dispense with opening statements and final arguments.

(3) The court shall be advised of any medications administered to the respondent within the prior 24-hour period, and if it appears that the person detained has refused medication 24 hours before the hearing, but was nevertheless forced to receive medication during that period, the court may continue the hearing for 24 hours, and may order that no medication shall be administered to the person detained during such period.

(4) At the conclusion of the hearing, the court shall make written findings of fact and conclusions of law, and enter an order for release or for detention for an additional 14 days in an evaluation and treatment facility, or such lesser treatment as shall to the court appear proper. A copy of the order shall be served upon the evaluation and treatment facility and on the mental health professional who signed the petition.

RULE 2.5

(Rescinded. See RCW 71.34.)

RULE 3.1
FIRST COURT APPEARANCE

For purposes of proceedings for 90-day commitment, the phrase "first court appearance" provided in RCW 71.05.310, shall refer to the appearance provided for in RCW 71.05.300 of that act.

RULE 3.2
PRELIMINARY APPEARANCE

Prior to the hearing provided for in RCW 71.05.320(2), the committed person shall be brought before the court for an appearance which shall be the same as that provided in RCW 71.05.300 of that act.

RULE 3.3
JURY DEMAND

(a) When Available. A jury is available only in a hearing for 90- or 180-day commitment proceedings pursuant to RCW 71.05.300 and RCW 71.05.320.

(b) Procedure for Demand. Within 2 judicial days after the person detained is advised in open court of his right to a jury trial as provided in RCW 71.05.300 the person detained may demand a trial by jury in the hearing on the petition for 90-day or 180-day detention by serving upon the prosecuting attorney a demand therefor in writing, by filing the demand therefor with the clerk. No jury fee shall be required. If no party, within the time above specified, serves and files a demand for jury trial, the matter shall be heard without a jury. If no party, within the time above specified, serves or files a demand that the matter be tried by a jury of 12, it shall be tried by a jury of 6 members, with concurrence of 5 being required to reach a verdict.

RULE 3.4
HEARING

(a) Procedure. The hearing shall be proceeded with as in any other civil action.

(b) Findings and Conclusions. Unless the matter is tried to a jury, the court shall make and enter findings of fact and conclusions of law.

(c) Verdict. If the matter is tried to a jury, the court shall instruct the jury to bring in a special verdict, which shall be in terms of the issues specified in RCW 71.05.320.

RULE 4.1
NOTICE OF CONDITIONS

Any person conditionally released pursuant to RCW 71.05.340 shall be notified in writing of the terms and conditions of the release and shall be notified in writing of any modifications of such terms and conditions. Such notification shall also be given in writing to the court which ordered the person's commitment.

RULE 4.2
AUTHORIZATION FOR APPREHENSION AND DETENTION

At the time of taking any person into custody for failure to adhere to the terms and conditions of release under RCW 71.05.340 or of an alternative treatment under RCW 71.05.320, an authorization for apprehension and detention shall be served upon the person. The authorization for apprehension and detention shall include:

(a) The name of the person taken into custody;

(b) A statement that it is issued pursuant to the suspension of conditional release or alternative treatment;

(c) The date on which the order of commitment or order for alternative treatment was entered and the number of days, if any, for which the person was ordered committed.

(d) The authorization shall be in substantially the following form:

TO: ANY PEACE OFFICER OR MENTAL HEALTH PROFESSIONAL

You are authorized to take or cause to be taken (name of person) into custody and place such person in (name and location of evaluation and treatment facility) for detention pursuant to ___ RCW 71.05.340 (suspension of conditional release) or ___ RCW 71.05.320 (suspension of alternative treatment). The named person was ___ conditionally released from an order of commitment or ___ originally placed on alternative treatment, the conditions of which have been violated. The named person's commitment to inpatient treatment or alternative treatment was originally ordered for (number) days by (name of court) on (date).

Date: _____ (signed) _____
___ Secretary, Department of Social and Health Services, State of Washington, or His Designee,
___ Mental Health Professional
(name) County, Washington

RULE 4.3
PETITION AND ORDER OF APPREHENSION AND DETENTION--SERVICE

Unless otherwise ordered by the court, the petition and order of apprehension and detention required in RCW 71.05.340, shall be served on the person to be apprehended and detained at the time of apprehension, and on his guardian, if any, and his attorney, if any, as soon as possible.

Where no order of apprehension and detention has been issued, a petition shall be filed with the court within 72 hours and the person, his attorney, if any, and his guardian, if any, shall be served with a copy of the petition within 24 hours after the petition is filed with the court. At the time the petition is served on the person, notice shall be filed with the court and served on the person that a hearing will be held within 15 days.

RULE 4.4
PETITION FOR INITIAL DETENTION

A mental health professional may commence new proceedings for 72-hour detention pursuant to RCW 71.05.150, notwithstanding an order of less restrictive alternative treatment under RCW 71.05.320 or a grant of conditional release pursuant to RCW 71.05.340.

RULE 4.5
HEARING

(a) Burden of Proof. Before entering an order returning any person for involuntary treatment on an inpatient basis as a result of failure to adhere to the terms and conditions of conditional release pursuant to RCW 71.05.340 or less restrictive treatment under RCW 71.05.320, the court shall find at the hearing that there is clear, cogent, and convincing

evidence that such person did not adhere to the terms and conditions of release or less restrictive treatment, that the terms of such release or treatment should not be modified, and that the person should be returned to inpatient treatment.

(b) Waiver. Waiver of the hearing provided for in RCW 71.05.340 shall be in writing signed by all persons required to waive under that section. A copy of the waiver shall be filed with the court in which the notice of apprehension and detention was filed.

RULE 5.1
GENERAL

Proceedings pursuant to RCW 71.05 shall be brought in the superior court of the county in which the person is being detained. The court, for good cause, may transfer a proceeding to the county of respondent's residence, or to the county in which the alleged conduct evidencing need for treatment occurred.

RULE 5.2
CONDITIONAL RELEASE HEARING

The notice of apprehension and detention and the petition for hearing required in RCW 71.05.340, shall be filed in the county ordering the commitment from which the person was conditionally released. Upon motion for good cause, the court may order the proceeding transferred to the court in the county in which the person was receiving outpatient care or the county of the person's residence.

RULE 5.3
RELEASE OF RECORDS

A proceeding for the release of records or files pursuant to RCW 71.05. 390 shall be in the court maintaining such records or files.

RULE 5.4

(RESERVED)

RULE 6.1
PETITION FOR INITIAL DETENTION

The petition for initial detention shall contain the following:

(a) Identification of the petitioner as a peace officer or designated mental health professional.

(b) A statement describing the circumstances under which the condition of the respondent was brought to the petitioners attention.

(c) A statement that as a result of the petitioners personal observation or investigation, the petitioner believes that the actions of the respondent constitute a likelihood of harm to the respondent, others, or to the property of others, or that the respondent is gravely disabled.

(d) A statement of the specific facts known to the petitioner upon which he bases his belief that respondent should be detained for the purposes and under the authority of RCW 71.05.

(e) A request that the respondent be detained at an evaluation and treatment facility for no more than a 72-hour treatment and evaluation period.

(f) The date and the signature of the petitioner.

(g) The petition shall be in substantially the following form:

SUPERIOR COURT OF WASHINGTON
FOR (_____) COUNTY

In re the Detention of:	)	
	)	No. _____
	)	
Petitioner:	)	PETITION FOR INITIAL
and	)	DETENTION
	)	
Respondent:	)	RCW _____

Pursuant to RCW 71.05 petitioner ___ a peace officer or ___ mental health professional designated by the county alleges under penalty of perjury that:

Respondent, _____, was brought to my attention under the following circumstances: _____

_____

_____

As a result of my personal observation or investigation I believe that the actions of the respondent constitute a likelihood of serious harm to the respondent, others, or to the property of others, or that the respondent is gravely disabled.

The specific facts known to me as a result of personal observation or investigation, upon which I base the belief that the respondent should be detained for the purposes and under the authority of RCW 71.05 are:

_____

_____

Therefore the petitioner requests that the respondent be detained at an evaluation and treatment facility for no more than a 72-hour evaluation and treatment period, excluding Saturdays, Sundays, and holidays.

Dated this _____ day of _____, 19____.

_____
Petitioner

Sworn and Subscribed on _____

_____
Notary Public for the State of
Washington Residing at _____
My commission expires on _____

RULE 6.1A
PETITION FOR INITIAL DETENTION OF A MINOR

The petition for initial detention shall contain the following:

(a) Identification of the petitioner as a designated mental health professional.

(b) A statement describing the circumstances under which the condition of the respondent was brought to the petitioners attention.

(c) A statement that as a result of the petitioners personal observation or investigation, the petitioner believes that the actions of the respondent constitute a likelihood of serious harm to the respondent, others, or to the property of others, or that the respondent is gravely disabled.

(d) A statement of the specific facts known to the petitioner upon which he bases his belief that respondent should be detained for the purposes and under the authority of RCW 71.34.

(e) A request that the respondent be detained at an evaluation and treatment facility for no more than a 72-hour treatment and evaluation period.

(f) A statement that voluntary admission for inpatient treatment is not possible.

(g) The date and the signature of the petitioner.

(h) The petition shall be in substantially the following form:

SUPERIOR COURT OF WASHINGTON
FOR (_____) COUNTY

In re the Detention of:	)	
	)	No. _____
	)	
Petitioner:	)	PETITION FOR INITIAL
and	)	DETENTION OF A MINOR
	)	
Respondent:	)	RCW 71.34.050

Pursuant to RCW 71.34 petitioner, a mental health professional designated by the county, alleges under penalty of perjury that:

Respondent, _____, was brought to my attention under the following circumstances: _____

_____

_____

As a result of my personal observation or investigation I believe that the actions of the respondent constitute a likelihood of serious harm or

that the respondent is gravely disabled.
The specific facts known to me as a result of personal observation or investigation, upon which I base the belief that the respondent should be detained for the purposes and under the authority of RCW 71.34 are:

_____

_____

Voluntary admission is not possible. Therefore the petitioner requests that the respondent be detained at an evaluation and treatment facility for no more than a 72-hour evaluation and treatment period, excluding Saturdays, Sundays, and holidays.

Dated this _____ day of _____, 19____.

_____
Petitioner

Sworn and Subscribed on _____

_____
Notary Public for the State of Washington
Residing at _____
My commission expires on _____

RULE 6.2
PETITION FOR FOURTEEN-DAY INVOLUNTARY TREATMENT

The petition for 14-day involuntary treatment shall contain the following:

(a) The name and address of the petitioner(s).

(b) The name of the person alleged, as a result of mental disorder, to present a likelihood of serious harm to him/herself, others, or the property of others, or to be gravely disabled, and, if known to the petitioner, the address, age, sex, marital status and occupation of the person. Such person shall be denominated the respondent.

(c) The facts upon which the allegations of the petition are based.

(d) The name of every person known or believed by the petitioner to be legally responsible for the care, support, and maintenance of the person alleged, as a result of mental disorder, to present a likelihood of serious harm to others or himself, or to be gravely disabled, and the address of each such person if known to the petitioner.

(e) A statement that the professional staff of the evaluation and treatment facility has examined and analyzed respondent's condition and finds that as a result of mental disorder respondent presents a likelihood of serious harm to himself or others or is gravely disabled.

(f) A statement that the respondent has been advised of the need for voluntary treatment and that the professional staff of the facility has evidence that he has not in good faith volunteered.

(g) A statement that the facility providing intensive treatment is certified to provide such treatment by the Department of Social and Health Services of the State of Washington.

(h) A statement that there is no less restrictive alternative to detention in the best interests of respondent or others, or that a less restrictive alternative is sought and a specification of what that alternative is.

(i) A demand that a probable cause hearing be held within 72 hours after provisional acceptance at the evaluation and treatment facility, excluding Saturdays, Sundays, and holidays, unless the person is sooner released, on the issue of whether the respondent shall be detained for an additional 14 days' involuntary treatment or whether such person shall be treated under less restrictive alternatives.

(j)The petition shall be in substantially the following form:

SUPERIOR COURT OF WASHINGTON
FOR (_____) COUNTY

In re the Detention of:	)	No. _____
	)	
	)	PETITION FOR FOURTEEN-DAY INVOLUNTARY TREATMENT
Respondent.	)	RCW _____

(Petitioner(s)), ___ mental health professional for _____ County, ___ member(s) of professional staff of _____ (agency or facility), ___ prosecuting attorney for _____

County pursuant to RCW 10.77.090, alleges that:

(Respondent), residing at (address) in (city or town), is a ___ single ___ married ___ widowed ___ divorced ___ male ___ female age _____. (Respondent's) occupation is _____
_____
_____

The professional staff of the evaluation agency or facility has examined respondent's condition and finds that as a result of mental disorder (respondent) presents:

___ a likelihood of serious harm to him/herself,
___ a likelihood of serious harm to others,
___ a likelihood of serious harm to the property of others,
___ is gravely disabled.

The facts upon which the allegations of this petition are based are as follows:

_____

_____
(use back of page if necessary)

The person(s) legally responsible for the care, support, and maintenance of (respondent) and their relationship to him are, so far as known to the petitioner, as follows: (Give names, addresses, and relationship of persons named as respondents.)

_____
(use back of page if necessary)

The respondent has been advised of the need for, but has not accepted voluntary treatment.

The facility providing intensive treatment is certified to provide such treatment by the Department of Social and Health Services.

The petitioner(s) request(s) that a hearing be held before (time and date) unless the respondent is sooner released, to determine whether (respondent) ___ shall be detained for 14 days' involuntary treatment because there is no less restrictive alternative to detention in the best interest of respondent or others, or ___ shall be required to comply with the following less restrictive alternative:

_____

_____

Dated this _____day of _____, 19____.

_____
Petitioner __ Physician __ MHP __ Prosecuting Attorney __

_____
Petitioner __ Physician __ MHP __ Prosecuting Attorney __

_____

_____
Address

Sworn and Subscribed on_____

_____
Notary Public for the State of Washington
Residing at _____
My commission expires on_____

RULE 6.2A
PETITION FOR FOURTEEN-DAY COMMITMENT
OF MINORS

The petition for 14-day commitment of a minor shall contain the following:
(a) The names and addresses of the petitioners. The petitioners shall be two physicians or one physician and one mental health professional.
(b) The name, address, age, and sex of the respondent minor.
(c) The name, address and telephone number, if known, of every person believed by the petitioner to be legally responsible for the minor.
(d) A statement that the minor is or is not in detention at the time the petition is filed, and, if so, the name and location of the place of

detention.

(e) A statement that the minor, as a result of mental disorder, presents a likelihood of serious harm to him/herself or others, or is gravely disabled.

(f) A statement that the minor has been advised of the need of voluntary treatment but has been unwilling or unable to consent to necessary treatment.

(g) The facts upon which the allegations of the petition are based.

(h) A statement concerning whether an alternative less restrictive than inpatient treatment is in the best interest of the minor.

(i) The name and location of the facility in which respondent will be detained and a statement that such facility is certified by the Department of Social and Health Services to provide evaluation and treatment to persons under 18 years of age suffering from mental disorders.

(j) A statement recommending the appropriate facility or facilities to provide the necessary treatment.

(k) A demand that a hearing be held to determine whether the minor shall be committed to inpatient treatment or whether an alternative less restrictive treatment exists.

(l) The petition shall be in substantially the following form:

SUPERIOR COURT OF WASHINGTON
FOR (_____) COUNTY

In re the Detention of:	)	No. _____
	)	
	)	PETITION FOR FOURTEEN-DAY COMMITMENT OF A MINOR
	)	
	)	
Respondent.	)	RCW 71.34.070

(Petitioners) are (physician) and (physician/mental health professional). Petitioners' addresses are _____
_____

(Respondent), residing at (address) in (city or town), Washington, is a ___ male ___ female years of age.

The name, address and telephone number of every person believed by the petitioner to be legally responsible for the minor:
_____
_____

At the time of filing this petition, respondent ___ is ___ is not in detention pursuant to RCW 71.34. If respondent is in detention, the name and location of the facility in which respondent is in detention are
_____.

Respondent, as a result of mental disorder, ___ presents a likelihood of serious harm to him/herself, ___ presents a likelihood of serious harm to others, ___ is gravely disabled.

That the minor has been advised of the need for voluntary treatment and is unwilling or unable to consent to necessary treatment.

The facts upon which the allegations of this petition are based are: _____
_____

The following alternative courses of treatment have been considered:
_____

No alternative less restrictive than detention is in the best interest of the respondent.

The facility in which respondent will be detained is (name and location), certified by the Department of Social and Health Services to provide evaluation and treatment to persons under 18 years of age suffering from mental disorders.

Recommended treatment facilities: _____
Name

_____
Address

The petitioner(s) request(s) that a hearing be held in the above named court to determine whether respondent shall be involuntarily committed to inpatient care or whether there shall be an alternative less restrictive treatment pursuant to RCW 71.34.

Dated this _____ day of _____, 19____.

_____
Petitioner (MD)

_____
Petitioner (MD/MHP)

Sworn and Subscribed on _____

_____
Notary Public for the State of Washington
Residing at _____
My commission expires on _____

RULE 6.3
PETITION FOR NINETY-DAY INVOLUNTARY TREATMENT

The petition for 90-day involuntary treatment shall contain the following:

(a) The name and address of the petitioner.

(b) The name and address of the person alleged, as a result of mental disorder, to present a likelihood of serious harm to him/herself or others because such person (1) has threatened, attempted, or inflicted physical harm upon the person of another or him/herself or substantial damage upon the property of another after having been taken into custody for evaluation and treatment, or (2) was taken into custody as a result of conduct in which he/she attempted or inflicted physical harm upon the person of another or him/herself, or (3) is gravely disabled, or (4) has been determined to be incompetent and criminal charges have been dismissed pursuant to RCW 10.77.090(3) and has committed acts constituting a felony, and presents substantial likelihood of repeating similar acts. Such person shall be denominated the respondent.

(c) A statement that petitioner is the professional person in charge of the treatment facility in which the respondent is detained pursuant to court order or his professional designee, or the county mental health professional of (name) County.

(d) The name of the court ordering 14-day involuntary treatment or finding the respondent incompetent pursuant to RCW 10.77.090(3) and the date on which such order or finding was entered.

(e) A summary of the facts supporting the allegations of the petition.

(f) A demand that a hearing be held within 5 judicial days of the first court appearance after the probable cause hearing unless the person named in the petition requests a jury trial, in which case trial shall commence within 10 judicial days of the filing of the petition for 90-day treatment on the issue of whether the person alleged, as a result of mental disorder, to present a likelihood of serious harm, to himself or others, shall be detained for involuntary treatment for a period not to exceed 90 days.

(g) A statement that the petition is supported by accompanying affidavits and the names of the persons signing such affidavits.

(h) The petition shall be in substantially the following form:

SUPERIOR COURT OF WASHINGTON
FOR (_____) COUNTY

In re the Detention of:	)	No. _____
	)	
	)	PETITION FOR NINETY-DAY
	)	INVOLUNTARY TREATMENT
	)	
Respondent.	)	RCW _____

(Petitioner), ___ the professional person in charge, or ___ his professional designee, or ___ the county mental health professional for (name) county, of (name of facility) in which (respondent) is detained for (number) days pursuant to an order of (name of court) entered on (date) alleges that:

(Respondent), residing at (address) in (city or town), is a ___ single ___ married ___ widowed ___ divorced ___ male ___ female age _____.

As a result of mental disorder (respondent) presents a likelihood of serious harm to him/herself or others because respondent ___ has threatened, attempted, or inflicted physical harm upon the person of another or him/herself or substantial damage upon the property of another after having been taken into custody for evaluation and treatment, or ___ was taken into custody as a result of conduct in which respondent threatened, attempted or inflicted physical harm upon the person of another or him/herself, or ___ is gravely disabled, or ___ has been determined to be incompetent and criminal charges have been dismissed pursuant to RCW 10.77.090(3), and has committed acts constituting a felony, and as a result of mental disorder, presents a substantial likelihood of repeating similar acts.

The facts upon which the allegations of this petition are based are summarized as follows: _____
_____

The allegations are supported by the accompanying affidavits signed by _____.

The petitioner requests that a hearing be held to determine whether (respondent) shall be detained for involuntary treatment for a period not to exceed 90 days.

Dated this _____ day of _____, 19____.

_____
Petitioner

Sworn and Subscribed on _____

_____
Notary Public for the State of Washington
Residing at _____
My commission expires on _____

RULE 6.4
PETITION FOR ONE HUNDRED EIGHTY-DAY

INVOLUNTARY TREATMENT

The petition for 180-day involuntary treatment shall contain the following:

(a) The name and address of the person filing the petition and the statement that the petitioner is the superintendent or professional person in charge of the facility in which the person who is alleged, as a result of mental disorder, to present a likelihood of serious harm to others, is detained, or in the event that the defendant has received involuntary treatment but has not been committed to a treatment facility or has been conditionally released from such a facility, a statement that the petitioner is the county mental health professional of (name) County.

(b) The name and address of the person alleged, as a result of a mental disorder, to present a likelihood of serious harm to others because such person (1) during his/her current period of court ordered treatment has threatened, attempted or actually inflicted physical harm on another or substantial damage upon the property of another, or (2) was taken into custody as a result of conduct in which he/she attempted or inflicted serious physical harm upon the person of another and continues to present, as a result of mental disorder, a likelihood of serious harm to others, or (3) is in custody pursuant to RCW 71.05.280(3) (acts constituting a felony) and as a result of mental disorder presents a substantial likelihood of repeating similar acts, or (4) continues to be gravely disabled. Such person shall be denominated the respondent.

(c) The name of the court ordering involuntary treatment for which the respondent is presently detained, and the date on which such order was entered.

(d) A summary of the facts supporting the allegations of the petition.

(e) A demand that a hearing be held within 5 judicial days of the first court appearance after the probable cause hearing unless the person named in the petition requests a jury trial, in which case trial shall commence within 10 judicial days of the filing of the petition for 180-day treatment on the issue of whether the person alleged, as a result of mental disorder, to present a likelihood of serious harm to others, shall be detained for involuntary treatment for a period not to exceed 180 days.

(f) A statement that a form of treatment less restrictive than involuntary detention is not in the best interest of the respondent or others.

(g) The petition shall be in substantially the following form:

SUPERIOR COURT OF WASHINGTON
FOR (_____) COUNTY

In re the Detention of:	)	No. _____
	)	
	)	PETITION FOR ONE HUNDRED
	)	EIGHTY-DAY INVOLUNTARY
	)	TREATMENT
	)	
Respondent.	)	RCW _____

(Petitioner), the superintendent or professional person in charge of (name of facility) in which (respondent) is detained for (number) days pursuant to an order of (name of court) entered on (date) alleges that:

(Respondent), residing at (address) in (city or town), is a ___ single ___ married ___ widowed ___ divorced ___ male ___ female age _____.

(Respondent) ___ has threatened, attempted or actually inflicted harm on another person, or substantial damage upon the property of another during respondent's current period of court ordered treatment and as a result of mental disorder presents a likelihood of serious harm to others, or ___ was taken into custody as a result of conduct in which respondent attempted or inflicted serious physical harm upon the person of another and continues to present as a result of mental disorder a likelihood of serious harm to others, or ___ is in custody pursuant to RCW 71.05.280(3) (acts constituting a felony) and as a result of mental disorder presents a substantial likelihood of repeating similar acts, or ___ continues to be gravely disabled.

The facts upon which the allegations of this petition are based are as follows: _____
_____
_____

A form of treatment less restrictive than involuntary detention is not in the best interest of the respondent or others.

The petitioner requests that a hearing be held to determine whether (respondent) shall be detained for involuntary treatment for a period not to exceed 180 days.

Dated this _____ day of _____, 19____.

_____
Petitioner

Sworn and Subscribed on _____

_____
Notary Public for the State of Washington
Residing at _____
My commission expires on _____

RULE 6.4A
PETITION FOR ONE HUNDRED EIGHTY-DAY INVOLUNTARY TREATMENT OF A MINOR

The petition for 180-day involuntary treatment of a minor shall contain the following:

(a) The name and address of the person filing the petition and the statement that the petitioner is the professional person in charge of the facility in which the person who is alleged, as a result of mental disorder, to present a likelihood of serious harm to others or is gravely disabled, is detained, or in the event that the defendant has received involuntary treatment but has not been committed to a treatment facility or has been conditionally released from such a facility, a statement that the petitioner is the county mental health professional of (name) County.

(b) The name and address and age of the minor alleged, as a result of a mental disorder, to present a likelihood of serious harm to him/herself, others, or property or continues to be disabled. Such minor shall be denominated the respondent.

(c) The name of the court ordering involuntary treatment for which the respondent is presently detained, and the date on which such order was entered.

(d) A summary of the facts supporting the allegations of the petition.

(e) A demand that a hearing be held within 7 days of the filing of the petition for 180-day treatment on the issue of whether the minor alleged, as a result of mental disorder, to present a likelihood of serious harm or is gravely disabled, shall be detained for involuntary treatment for a period not to exceed 180 days.

(f) A statement that the minor is in need of further treatment that can only be provided in a 180-day commitment and this treatment is in the minors best interests.

(g) A statement that less restrictive alternative treatment is/is not available and/or appropriate.

(h) The petition shall be supported by accompanying affidavits signed by two examining physicians, one of whom shall be a child psychiatrist, or by one examining physician and one children's mental health specialist.

(i) The petition shall be in substantially the following form:

SUPERIOR COURT OF WASHINGTON
FOR (_____) COUNTY

In re the Detention of:	)	No. _____
	)	
	)	PETITION FOR ONE HUNDRED
	)	EIGHTY-DAY INVOLUNTARY
	)	TREATMENT OF A MINOR
	)	
Respondent.	)	RCW 71.34.090

(Petitioner), professional person in charge of (name of facility) in which (respondent) is detained for (number) days pursuant to an order of (name of court) entered on (date) alleges that:

(Respondent), residing at (address) in (city or town), is a ___ single ___ married ___ widowed ___ divorced ___ male ___ female age _____.

(Respondent) ___ presents a likelihood of serious harm to him/herself or ___ presents a likelihood of serious harm to others or ___ presents a likelihood of serious harm to property or ___ is gravely disabled.

(Respondent) ___ has threatened, attempted or actually inflicted harm on another person, or substantial damage upon the property of another during respondent's current period of court ordered treatment and a s result of mental disorder presents a likelihood of serious harm to other, or ___ was taken into custody as a result of conduct in which respondent attempted or inflicted serious physical harm upon the person of another and continues to present as a result of mental disorder a likelihood of serious harm to others, or ___ is in custody pursuant to RCW 71.05.280(3) (acts constituting a felony) and as a result of mental disorder presents a substantial likelihood of repeating similar acts, or ___ continues to be gravely disabled.

Summary of facts supporting the petition: _____
_____
_____
_____

A form of treatment less restrictive than involuntary detention ___ is or ___ is not in the best interest of the respondent or others.

The petitioner requests that a hearing be held to determine whether (respondent) shall be detained for involuntary treatment for a period not to exceed 180 days.

Dated this _____ day of _____, 19____.

_____
Petitioner (MD)

_____
Petitioner (MD/MHP)

Sworn and Subscribed on _____

_____
Notary Public for the State of Washington
Residing at _____
My commission expires on _____

RULE 6.5
PETITION FOR REVOCATION OF CONDITIONAL RELEASE
OR LESS RESTRICTIVE TREATMENT

The petition for revocation of conditional release or less restrictive treatment shall contain the following:

(a) The name and address of the petitioner and the statement that petitioner is the Secretary of the Department of Social and Health Services, State of Washington, or is the county mental health professional for (name) County.

(b) The name and address of the person alleged to have failed to adhere to the terms and conditions of release or less restrictive treatment. Such person shall be denominated the respondent.

(c) The facts upon which the allegations of the petition are based.

(d) A statement that the respondent was released under terms and conditions of a court ordered less restrictive treatment or under terms and conditions set by an evaluation and treatment facility, and that a copy of the terms and conditions is attached to the petition. The statement shall also contain the date the order was entered, number of days for which effective, and the court entering such order.

(e) The date, time and place of detention of the respondent if he is detained pursuant to an order of the secretary, or whether such an order has been or will be issued.

(f) A demand that a hearing be held within 5 days of the date on which respondent was detained pursuant to an order of the secretary, or not less than 15 days from the date of service of the petition on the respondent, on the issues of whether the respondent failed to adhere to the terms and conditions of release or less restrictive treatment, whether the conditions of the release should be modified, or whether the person should be placed in an involuntary treatment facility.

(g) The petition shall be in substantially the following form, with a copy of the terms and conditions attached:

SUPERIOR COURT OF WASHINGTON
FOR (_____) COUNTY

In re the Detention of:	)	No. _____
	)	
	)	PETITION FOR REVOCATION
	)	OF CONDITIONAL RELEASE
	)	
Respondent.	)	RCW _____

(Petitioner), ___ Secretary of the Department of Social and Health Services, State of Washington, or ___ county mental health professional for (name) County alleges that:

(Respondent), residing at (address) in (city or town), is a ___ single ___ married ___ widowed ___ divorced ___ male ___ female age _____.

Pursuant to an order of (name) court entered on (date), respondent was detained for involuntary treatment for a period not to exceed (number) days in (name of facility), or was placed on less restrictive alternative treatment.

___ (Respondent) was conditionally released from inpatient care at (name of facility) prior to expiration of the court ordered period of detention, under terms and conditions for such release copies of which, including modifications, are attached and were filed in (name) court on (date(s)) or ___ respondent was placed on less restrictive treatment under terms and conditions copies of which, including modifications, are attached.

During the period of conditional release or less restrictive treatment, respondent was receiving outpatient care from (name of facility) located in (city or town), (name) County.

Pursuant to RCW _____, petitioner ___ has ___ has not issued an order for the apprehension and detention of respondent and respondent ___ is not detained ___ is detained in (name of facility) located in (city, town), (name) county.

(Respondent) has failed to adhere to the terms and conditions of respondent's release from involuntary detention or less restrictive alternative treatment and ___ the conditions of release or less restrictive treatment should be modified or ___ the person should be placed in an involuntary treatment facility.

The facts upon which the allegations of this petition are based are as follows: _____
_____.

The petitioner requests that a hearing be held to determine whether respondent has failed to adhere to the terms and conditions of release or less restrictive treatment, and whether the respondent shall be placed on involuntary treatment on an inpatient basis or whether the terms and conditions of release or less restrictive treatment shall be modified.

Dated this _____ day of _____, 19____.

_____

Petitioner

Sworn and Subscribed on _____

_____
Notary Public for the State of Washington
Residing at _____
My commission expires on _____

RULE 6.5A
PETITION FOR REVOCATION OF CONDITIONAL RELEASE
OR LESS RESTRICTIVE TREATMENT OF A MINOR

The petition for revocation of conditional release or less restrictive treatment shall contain the following:

(a) The name and address of the petitioner and the statement that petitioner is the Secretary of the Department of Social and Health Services, State of Washington, or is the county mental health professional for (name) County.

(b) The name and address of the person alleged to have failed to adhere to the terms and conditions of release or less restrictive treatment or whose functioning has substantially deteriorated. Such person shall be denominated the respondent.

(c) The facts upon which the allegations of the petition are based.

(d) A statement that the respondent was released under terms and conditions of a court ordered less restrictive treatment or under terms and conditions set by an evaluation and treatment facility, and that a copy of the terms and conditions is attached to the petition, or that substantial deterioration of the minors functioning has occurred. The statement shall also contain the date the order was entered, number of days for which effective, and the court entering such order.

(e) The date, time and place of detention of the respondent if he/she is detained pursuant to an order of the secretary, or whether such an order has been or will be issued.

(f) A demand that a hearing be held within 7 days of the date on which respondent was detained.

(g) The petition shall describe the behavior of the minor indicating violation of the conditions or deterioration of routine functioning and a dispositional recommendation.

(h) The petition shall be in substantially the following form, with a copy of the terms and conditions attached:

SUPERIOR COURT OF WASHINGTON
FOR (_____) COUNTY

In re the Detention of:	)	No. _____
	)	
	)	PETITION FOR REVOCATION
	)	OF CONDITIONAL RELEASE
	)	OR LESS RESTRICTIVE
	)	ALTERNATIVE TREATMENT
	)	
Respondent.	)	RCW 71.34.110

(Petitioner), ___ Secretary of the Department of Social and Health Services, State of Washington, or ___ county mental health professional for (name) County alleges that:

(Respondent), residing at (address) in (city or town), is a ___ single ___ married ___ widowed ___ divorced ___ male ___ female age _____.

Pursuant to an order of (name) court entered on (date), respondent was detained for involuntary treatment for a period not to exceed (number) days in (name of facility), or was placed on less restrictive alternative treatment.

___ (Respondent) was conditionally released from inpatient care at (name of facility) prior to expiration of the court ordered period of detention, under terms and conditions for such release copies of which, including modifications, are attached and were filed in (name) court on (date(s)) or ___ respondent was placed on less restrictive treatment under terms and conditions copies of which, including modifications, are attached.

During the period of conditional release or less restrictive treatment, respondent was receiving outpatient care from (name of facility) located in (city or town), (name) County.

Pursuant to RCW _____, petitioner ___ has ___ has not issued an order for the apprehension and detention of respondent and respondent ___ is not detained ___ is detained in (name of facility) located in (city or town), (name) County.

(Respondent) has failed to adhere to the terms and conditions of respondent's release from involuntary detention or less restrictive alternative treatment, the minors routine functioning has substantially deteriorated and ___ the conditions of release or less restrictive treatment should be modified or ___ the person should be placed in an involuntary treatment facility.

The facts upon which the allegations of this petition are based

are as follows: _____
_____

The petitioner requests that a hearing be held to determine whether respondent has failed to adhere to the terms and conditions of release or less restrictive treatment, or whether the minors routine functioning has substantially deteriorated, and whether the respondent shall be placed on involuntary treatment on an inpatient basis or whether the terms and conditions of release or less restrictive treatment shall be modified.

Dated this _____ day of _____, 19____.

_____
Petitioner

Sworn and Subscribed on _____

_____
Notary Public for the State of Washington
Residing at _____
My commission expires on _____

JUVENILE COURT RULES (JuCR)
TABLE OF RULES

TITLE 1
SCOPE AND APPLICATION OF RULES

TITLE 2
SHELTER CARE PROCEEDINGS

TITLE 3
DEPENDENCY PROCEEDINGS

TITLE 4
PROCEEDINGS TO TERMINATE PARENT-CHILD RELATIONSHIP

TITLE 5
PROCEEDINGS FOR CHILDREN IN NEED OF SERVICES

TITLE 5A
PROCEEDINGS FOR AT-RISK YOUTH

RULE 1.1
SCOPE OF RULES

These rules relate to procedure in the juvenile court.

RULE 1.2

JURISDICTION OF JUVENILE COURT

(a) Generally. The jurisdiction of the juvenile court is defined by RCW 13.04.030.

(b) Indian Children. In the case of an Indian child, as defined by the federal Indian Child Welfare Act of 1978, jurisdiction and proceedings under these rules shall be in accordance with that act.

RULE 1.3
DEFINITIONS

The definitions in RCW 13.04.011, RCW 13.32A.030, RCW 13.34.030, RCW 9A.76.010 and RCW 13.40.020 shall apply to these rules. For the purposes of these rules:

"Guardian" means a person appointed by court order under RCW 11.88 or RCW 13.34.230, but does not mean a person appointed a guardian ad litem under RCW 11.88.090, RCW 13.34.100, or RCW 26.44.053.

RULE 1.4
APPLICABILITY OF OTHER RULES

(a) Civil Rules. The Superior Court Civil Rules shall apply in proceedings other than those involving a juvenile offense when not inconsistent with these rules and applicable statutes.

(b) Criminal Rules. The Superior Court Criminal Rules shall apply in juvenile offense proceedings when not inconsistent with these rules and applicable statutes.

(c) Evidence Rules. The Rules of Evidence shall apply in juvenile court proceedings to the extent and with the exceptions stated in ER 1101.

(d) Local Rules. The local rules of a juvenile court shall apply when not inconsistent with these rules and applicable statutes. Local rules for juvenile court proceedings must be adopted in accordance with GR 7.

JuCR

RULE 1.5
CONTINUATION OF ACTIONS

(a) Dependency and Termination Proceedings.

(1) Actions filed on or after May 1, 1978, alleging dependency or seeking the termination of the parent-child relationship, in which the court has not entered a final order of dependency or termination prior to July 1, 1978, shall, after July 1, 1978, be governed by RCW 13.34 and these rules.

(2) The status of all juveniles found to be dependent prior to July 1, 1978, shall be reviewed as provided in RCW 13.34.130.

(3) Any proceeding to modify a disposition order in a case involving a juvenile found, prior to July 1, 1978, to be dependent shall be governed by RCW 13.34 and these rules.

(4) The court may modify the application of this section to a particular case when, in the opinion of the court, that application would work injustice.

(b) Juvenile Offense Proceedings. Juvenile offense proceedings shall be governed by the law in effect on the date the offense is found to have taken place.

Correction of inaccurate statutory reference.

RULE 2.1
PLACEMENT OF JUVENILE IN SHELTER CARE GENERALLY

(a) Without Court Order. A juvenile may be placed in shelter care without court order if the juvenile has been taken into custody pursuant to RCW 13.34.055 or RCW 26.44.050.

(b) With Court Order. A juvenile may be placed in shelter care with a court order if:

(1) A dependency petition has been filed pursuant to rule 3.2 and a motion has been made pursuant to section (c); or

(2) The juvenile has previously been found to be dependent, is the subject of a disposition order still in effect, and a motion has been made pursuant to section (c).

(c) Obtaining an Order to Take Child into Custody - Supporting Affidavit or Declaration Filed. A request for an order pursuant to RCW 13.34.050 shall be by motion supported by an affidavit or declaration filed by the department in support of the petition setting forth specific factual information pursuant to RCW 13.34.050 and demonstrating a risk of imminent harm for the child.

(d) Obtaining an Order to Take Child into Custody - No Supporting Affidavit or Declaration Filed. A request for an order pursuant to RCW 13.34.050 in which the department has not filed with the court a supporting affidavit or declaration shall not be approved until the parents have been provided notice and the opportunity to be heard.

Pursuant to 1998 C328 sec 1, amending RCW 13.34.050.

RULE 2.2
RELEASE OF JUVENILE FROM SHELTER CARE WITHOUT HEARING

(a) If Shelter Care Is Without Court Order. If a juvenile is taken into shelter care without a court order pursuant to RCW 13.34.055 or RCW 26.44.050, the juvenile shall be released unless a petition alleging dependency is filed within 72 hours (excluding Sundays and holidays) after taking the juvenile into custody.

(b) If Shelter Care Is With Court Order. If a juvenile is taken into shelter care pursuant to a court order, the juvenile shall be released unless an order authorizing continued shelter care is entered within 72 hours (excluding Sundays and holidays) after the juvenile is taken into custody.

RULE JuCR 2.3
RIGHT TO AND NOTICE OF SHELTER CARE HEARING

(a) Notice of Right to Shelter Care Hearing. The notice of the right to request a shelter care hearing required by RCW 13.34.060 shall be given to the child, his or her parents, guardian, or custodian as soon as possible and in no event longer than 24 hours of the taking into custody of the child, and in accordance with rule 11.2.

(b) Shelter Care Hearing Required. The court shall hold a shelter care hearing within 72 hours after the child is taken into custody, excluding Saturdays, Sundays, and holidays. If a parent, guardian, or legal custodian desires to waive the shelter care hearing, the court shall determine, on the record and with the parties present, that such waiver is knowing and voluntary.

(c) Notice of Shelter Care Hearing. The notice required by RCW 13.34.060(2) shall be given in accordance with rule 11.2. The notice shall inform the parents, guardian, or custodian of their right to a lawyer as provided in Title 9 of these rules.

(d) Indian Children. If the petitioner knows or has reason to know that the juvenile is an Indian child as defined by the federal Indian Child Welfare Act, the petitioner shall notify the child's tribe in the manner required by RCW 13.34.070(10) and 25 U.S.C. 1912.

[Amended effective September 1, 1987; September 1, 1993; September 1, 1997.]

RULE 2.4
PROCEDURE AT SHELTER CARE HEARING

(a) Inform Parties of Rights. The court shall inform the parties of their rights as set forth in RCW 13.34.090 and in Titles 2, 3, and 9 of these rules. The court may continue the hearing if the parties have been unable to retain a lawyer or have been unable to have a lawyer appointed for them.
(b) Hearing and Decision. The court shall hold the hearing on the question of shelter care in accordance with RCW 13.34.060 and RCW 13.34.090. The court shall make its decision in accordance with RCW 13.34.060.
(c) Release of Juvenile on Conditions. The court may release the juvenile on those conditions it deems appropriate. As provided in RCW 13.34.060, the conditions may be modified upon notice to the parties given in accordance with rule 11.2 and after a hearing.

Statutory references are broadened to streamline the need for updating.

(Effective September 1, 1999.)

RULE 2.5
AMENDMENT OF SHELTER CARE ORDER

The court may amend a shelter care order as provided in RCW 13.34.060(10) at a hearing held after notice to the parties given in accordance with rule 11.2. Any party may move to amend a shelter care order.

RULE 3.1
INVOKING JURISDICTION OF JUVENILE COURT

Juvenile court jurisdiction is invoked over dependency proceedings by filing a petition.

RULE 3.2
WHO MAY FILE PETITION--VENUE

(a) Who May File. Any person may file a petition alleging dependency.
(b) Venue. The petition shall be filed in the county where the juvenile is located or where the juvenile resides.

RULE 3.3
CONTENT OF DEPENDENCY PETITION

A dependency petition shall contain:
(a) Identification of the Juvenile. The name, age, sex, and residence of the juvenile so far as known to the petitioner.
(b) Identification of Parent, Guardian, or Custodian. The name, marital status, and residence of the parent, guardian, or custodian, or person with whom the juvenile is residing, so far as known to the petitioner. If not known, the petition shall so state.
(c) Indian Children. If the petitioner knows or has reason to know that the juvenile is an Indian child as

defined by the federal Indian Child Welfare Act, the petition shall so state and shall name the tribe, if known, to which the juvenile belongs.

(d) Jurisdictional Statement. A statement of the statutory provisions which give the court jurisdiction over the proceeding.

(e) Statement of Facts. A statement of the facts which give the court jurisdiction over the juvenile and over the subject matter of the proceedings, stated in plain language and with reasonable definiteness and particularity.

(f) Request for Inquiry. A request that the court inquire into the matter and enter an order that the court shall find to be in the best interests of the juvenile and justice.

(g) Other. Any other information required by court rule or statute.

RULE JuCR 3.4
NOTICE AND SUMMONS--SCHEDULING OF FACTFINDING HEARING

(a) Notice and Summons. After the petition has been filed, notice and summons shall be issued and served pursuant to RCW 13.34.070 or published pursuant to RCW 13.34.080. The notice shall state that the petition begins a process which, if the juvenile is found dependent, may result in permanent termination of the parent-child relationship.

(b) Advice To Be Contained in Notice. A notice directed to the juvenile or the juvenile's parent, custodian, or guardian shall contain the following advisement:

Right to Lawyer

(1) You have the right to talk to a lawyer if you desire and, if you cannot afford a lawyer, one will be appointed for you.

(2) A lawyer can look at the social and legal files in your case, talk to the caseworker, tell you about the law, help you understand your rights, and help you at trial.

(c) Scheduling Factfinding Hearing. The court shall schedule a factfinding hearing to be held within 75 days of the filing of the petition alleging dependency, giving preference to those cases where the juvenile is held in shelter care. The court may, for good cause shown, continue the hearing to a later time at the request of a party.

(d) Indian Children. If the petitioner knows or has reason to know that the juvenile is an Indian child as defined by the federal Indian Child Welfare Act, the petitioner shall notify the child's tribe in the manner required by RCW 13.34.070(10) and 25 U.S.C. 1912.

[Amended effective September 1, 1987; September 1, 1993; September 1, 1997.]

RULE 3.5
AMENDMENT OF PETITION

A petition may be amended at any time. The court shall grant additional time if necessary to insure a full and fair hearing on any new allegations in an amended petition.

RULE 3.6
ANSWER TO PETITION

Any party may file a written answer to a petition. An answer is not required unless ordered by the court or required by local rule.

RULE 3.7
FACTFINDING HEARING

(a) Procedure at Hearing. The court shall hold a factfinding hearing on the petition in accordance with RCW 13.34.110.

(b) Evidence. The Rules of Evidence shall apply to the hearing.

(c) Burden of Proof. In a factfinding hearing on a petition alleging dependency pursuant to RCW 13.34.030(4), the facts alleged in the petition must be proven by a preponderance of the evidence.

(d) Findings of Fact. In any dependency action in which the court makes specific findings of physical or sexual abuse or exploitation of a child the court shall direct the court clerk to notify the state patrol of the findings pursuant to RCW 43.43.840.

RULE 3.8
DISPOSITION HEARING

(a) Time. If a juvenile has been found to be dependent, the court shall hold a disposition hearing. If the disposition hearing does not immediately follow the factfinding hearing, notice of the continued hearing shall be given to all parties in accordance with RCW 13.34.110.

(b) Informing Parties of Purpose of Hearing. The court shall inform the parties of the purpose of the hearing. The court shall inform the parties of the new status of the juvenile as a result of the finding of dependency.

(c) Evidence. The court shall consider the social file, social study, and other appropriate predisposition studies, in addition to information produced at the factfinding and disposition hearings. Any party shall have the right to be heard at the disposition hearing. Any social file, social study, or predisposition study shall be made available for inspection by a party or his or her lawyer for a reasonable time prior to the disposition hearing.

(d) Submission of Agency Plan. If the agency plan referred to in RCW 13.34.130(3) is not submitted to the court at the time of the disposition hearing, it shall be filed with the court and distributed to all parties within 30 days after the disposition hearing.

(e) Transferring Legal Custody. A disposition which orders removal of the juvenile from his or her home shall have the effect of transferring legal custody to the agency or custodian charged with the juvenile's care. The transfer of legal custody shall give the legal custodian the following rights and duties:

(1) To maintain the physical custody of the juvenile;

(2) To protect, train, and discipline the juvenile;

(3) To provide food, clothing, shelter, education as required by law, and routine medical care for a juvenile; and

(4) To consent to emergency medical and surgical care and to sign a release of medical information to appropriate authorities, pursuant to law.

The court may, in its disposition order, modify the rights and duties granted to the legal custodian as a result of the transfer of legal custody.

JuCR
RULE 3.9
REVIEW HEARING

The status of all juveniles found to be dependent shall be reviewed by the court at least every 6 months, in accordance with RCW 13.34.130, except when a guardianship has been established under RCW 13.34.231 and 13.34.232. The parties shall be given notice of the review hearing in accordance with rule 11.2. All parties shall have the right to be present at the review hearing and to be heard. Notice of a review hearing concerning a juvenile who has been found dependent under RCW 13.34.030(4) and who has been removed from the parental home shall include an advisement that a petition to terminate the parent-child relationship may be

filed.

Correction of inaccurate statutory reference.

RULE 3.10
MODIFICATION OF ORDER

Any party may move to change, modify, or set aside an order pursuant to RCW 13.34.150. The motion shall be in writing and must state the basis for the motion and the relief requested. No order shall be changed, modified, or set aside except after notice to all parties and a hearing, unless the court waives the hearing on its own motion or upon motion of one of the parties, for good cause shown.

RULE 3.11
GUARDIANSHIP IN JUVENILE COURT

(a) Petition for Guardianship for Dependent Child. Any party to a dependency proceeding, including the supervising agency, may file a petition requesting that a guardianship be created for a dependent child. The court may, on its own motion, order the supervising agency to file such a petition.
(b) Scheduling and Notice. A guardianship hearing may be held in connection with a review hearing under rule 3.9, or it may be otherwise regularly scheduled. Notice of the time and place of the guardianship hearing may be given in open court. If notice is not given to a party in open court, the party shall be given notice in accordance with rule 11.2. Notice must be given to the Department of Social and Health Services, and the Department may intervene in the proceedings.
(c) Procedure; Evidence; Burden of Proof. The court shall hold a hearing on the petition in accordance with RCW 13.34.231. The Rules of Evidence apply, and the burden of proof is by a preponderance of the evidence.

RULE 4.1
INVOKING JURISDICTION OF JUVENILE COURT

Juvenile court jurisdiction is invoked over a proceeding to terminate a parent-child relationship by filing a petition.

RULE 4.2
PLEADINGS

(a) Petition. A petition requesting the termination of a parent-child relationship may be filed in the juvenile court. The petition shall conform to the requirements of rule 3.3, shall be verified, and shall state the facts which underlie each of the allegations required by RCW 13.34.180.
(b) Amendment of Petition. A petition may be amended as provided in rule 3.5.
(c) Answer. A party may answer a petition as provided in rule 3.6.

RULE JuCR 4.3
NOTICE OF TERMINATION HEARING

(a) Generally. Notice of the termination hearing and a copy of the petition shall be served on all parties in the manner defined by RCW 13.34.070(8) or published in the manner defined by RCW 13.34.080.

(b) Indian Children. If the petitioner knows or has reason to

know that the juvenile is an Indian child as defined by the federal Indian Child Welfare Act, the petitioner shall notify the child's tribe in the manner required by RCW 13.34.070(10) and 25 U.S.C. 1912.

[Amended effective September 1, 1987; September 1, 1997,]

RULE 5.1
INVOKING JURISDICTION OF JUVENILE COURT

Juvenile court jurisdiction is invoked over a proceeding for a child in need of services by filing a petition.

RULE 5.2
PLEADINGS

(a) Petition. A petition requesting an out-of-home placement, conforming to the requirements of rule 3.3, may be filed by a child or a child's custodial parent, legal custodian, or guardian pursuant to RCW 13.32A.030(13), RCW 13.32A.120(2) or (3), RCW 13.32A.150, or by the Department of Social and Health Services pursuant to RCW 13.32A.140.

(b) Venue. The petition shall be filed in the county where the custodial parent, legal custodian, or guardian resides.

(c) Amendment of Petition. A petition may be amended as provided in rule 3.5.

(d) Answer. A party may answer a petition as provided in rule 3.6.

JuCR RULE 5.3
SCHEDULING OF FACT-FINDING HEARING

When a proper petition has been filed, pursuant to RCW 13.32A.160 the court shall schedule a fact-finding hearing upon the question of out-of-home placement. For a child who resides in a place other than his or her parent's home and other than an out-of-home placement as defined in RCW 13.32A.030, a hearing shall be held within 5 calendar days unless the last calendar day is a Saturday, Sunday, or holiday, in which case the hearing shall be held on the preceding judicial day. For a child living at home or in an out-of-home placement, a hearing shall be held within 10 days.

Pursuant to 1997 C146 §6 amending RCW 13.32A.160.

[Amended effective September 1, 1987; September 1, 1997; September 1, 1999.]

RULE 5.4
NOTICE OF FACT-FINDING HEARING

The notice required by RCW 13.32A.160 shall be given in accordance with rule 11.2. The notice shall also include the following:

(1) Right to Lawyer. A statement advising the parents of their right to be represented by a lawyer at the hearing and, if the parents are indigent, that one will be appointed for them in accordance with rule 9.2;

(2) Consequences of Petition Approval. A statement advising the parties that if the court approves the petition, the child will be placed in a residence outside the parental home as determined by the court or by the Department of Social and Health Services, and that the parents will not be relieved of financial responsibility for the child unless the parents oppose placement and continuously seek reconciliation with and return of the child;

(3) Consequences of Petition Disapproval. A statement

advising the parties that if the court disapproves the petition, the court will order the child to remain at or return to the home of his or her parent;

(4) Right To Present Evidence. A statement advising the parties that they will be allowed to present evidence at the hearing on the petition.

RULE 5.5
PROCEDURE AT FACT-FINDING HEARING

The fact-finding hearing to consider a proper child in need of services petition shall be held in accordance with RCW 13.32A.170.

RULE 5.6
DISPOSITION HEARING

(a) Time. A disposition hearing shall be held within 14 days after approval of a temporary out-of-home placement.

(b) Notice. The notice of the disposition hearing required by RCW 13.32A.179(1) shall be given to the parties and to the Department of Social and Health Services in accordance with rule 11.2.

(c) Hearing. The hearing to consider the disposition plan shall be held in accordance with RCW 13.32A.179.

RULE 5.7
REVIEW HEARING

The court shall schedule a review of a dispositional order of an out-of-home placement within 3 months of the placement. The notice of the review hearing required by RCW 13.32A.190 may be given to the parties at the placement hearing, or they may be notified in accordance with rule 11.2. The hearing shall be conducted in accordance with RCW 13.32A.190.

Rule 5A.1
Invoking Jurisdiction of Juvenile Court

Juvenile court jurisdiction is invoked over an At-Risk Youth by filing a petition.

JuCR
Rule 5A.2
Scheduling of Fact-Finding Hearing

When a proper petition has been filed, pursuant to RCW 13.32A.192 the court shall schedule a fact-finding hearing. For a child who resides in a place other than his or her parent's home and other than an out-of-home placement as defined in RCW 13.32A.030, a hearing shall be held within 5 calendar days unless the last calendar day is a Saturday, Sunday, or holiday, in which case the hearing shall be held on the preceding judicial day. For a child living at home or in an out-of-home placement, a hearing shall be held within 10 days.

Pursuant to 1997 C146 sec 8 amending RCW 13.32A.192.

Rule 5A.3
Notice of Fact-Finding Hearing

The notice required by RCW 13.32A.192 shall be given in accordance with rule 11.2. The notice shall also include the following:

(1) Right to Lawyer. A statement advising the parent of their right to be represented by an attorney at their own expense;

(2) Consequences of Petition Approval. A statement advising the parties of the legal consequences should the court find the child to be an at-risk youth;

(3) Right to Present Evidence. A statement advising the parties that they will be allowed to present evidence at the hearing on the petition.

Rule 5A.4
Procedure at Fact-Finding Hearing

The fact-finding hearing to consider a proper at-risk youth petition shall be held in accordance with RCW 13.32A.194.

Rule 5A.5
Disposition Hearing

(a) Time. The hearing to consider a disposition plan shall be held within 14 days after the fact-finding hearing of an at-risk youth petition.

(b) Notice. The notice of the disposition hearing required by RCW 13.32A.194 shall be given to the parties and may be given to the Department of Social and Health Services in accordance with rule 11.2.

(c) Hearing. The hearing to consider the disposition plan shall be held in accordance with RCW 13.32A.196.

Rule 5A.6
Review Hearing

Upon making a disposition regarding an adjudicated at-risk youth, the court shall schedule the matter for review with 3 months. The notice of the review hearing required by RCW 13.32A.198(1) may be given to the parties at the disposition hearing, or they may be notified in accordance with rule 11.2. The Hearing shall be conducted in accordance with RCW 13.32A.198.

RULE 6.1
ELIGIBILITY FOR DIVERSION

A juvenile's eligibility for diversion shall be determined pursuant to RCW 13.40.070 and .080.

RULE 6.2
RIGHT TO CONSULT WITH A LAWYER

(a) Advice of Right to Representation by Lawyer. A juvenile found eligible for diversion shall, prior to the initial interview with the diversion unit, be advised of his or her right to consult with a lawyer concerning the juvenile's decision to enter into a diversion agreement or to appear in juvenile court.

(b) Appointment of Lawyer. The court shall appoint a lawyer for any

juvenile who is financially unable to obtain a lawyer for the consultation if the juvenile does not waive that right pursuant to rule 6.3.

(c) Retained Lawyer During Diversion Process. A juvenile may be represented by a retained lawyer during the diversion process in accordance with RCW 13.40.080(6).

RULE 6.3
WAIVER OF RIGHT TO LAWYER

A waiver containing the following statements and in substantially the following form shall be read by, signed by, and a copy given to a juvenile who waives the right to consult with a lawyer before an initial interview with a diversion unit:

Waiver of Lawyer

1. I know that I can talk to a lawyer about whether I should enter into a diversion process and will not have to pay for one if I cannot afford it.

2. I know that a lawyer can look at my police reports, tell me about the law, help me understand my rights, and help me decide whether I should enter into a diversion process or go to juvenile court.

Dated _____ Dated _____

_____ _____

Parent or Guardian (optional) Juvenile

The above statement was read to the juvenile and signed by the juvenile on the date indicated.

_____

Representative of Diversion Unit

JuCR
RULE 6.4
ADVICE ABOUT DIVERSION PROCESS

(a) Advice When Confinement Possible. A juvenile alleged to have committed an offense for which an adult could be confined shall be given a copy of a statement in substantially the following form during the initial interview with a diversion unit. The statement shall also be read by, or read to, the juvenile before the juvenile signs the statement.

Advice About Diversion

1. Diversion is a different way of dealing with juveniles who are charged with an offense. You do not go to court and there is no trial before a judge.

2. A diversion agreement is a contract between you and the diversion unit. A diversion agreement may require you to do certain things, such as community service, attend a counseling, informational, or educational interview, or make restitution, but you cannot be sent to jail. Under certain circumstances you may be counseled and released, which means no further action will be required of you.

3. If you sign a diversion agreement, or if you are counseled and released, the offense with which you are charged and any diversion agreement will be part of your criminal history. When you have a criminal history, (A) you may not necessarily be permitted to participate in diversion for other offenses you have committed or may commit in the future, and (B) you may be given a longer sentence for other offenses you have committed or may commit in the future.

4. Your criminal history for this offense will show whether or not you have completed the terms of this diversion agreement.

5. Your criminal history may be available to the police, the prosecutor, the court, and the diversion unit.

6. If you do not follow the diversion agreement, the prosecutor may bring you to a hearing for the offenses with which you are charged. If you do not appear at the court hearing, the court may order that you be arrested.

7. When you are 18 years old, you may ask the court to destroy all records on this offense if your criminal history consists of only one diversion and 2 years have passed since you completed the diversion agreement.

8. You have the right to talk to a lawyer about whether you should participate in diversion or whether you should go to court. You will not have to pay for a lawyer if you cannot afford it. If you do not believe you committed this offense, you should talk to a lawyer.

9. When you agree to participate in the diversion process, you do not have the right to have a free lawyer appointed for you to help you work out a diversion agreement, but you do have the right to have a lawyer help you work out a diversion agreement if you can afford to pay for it.

10. You do not have to participate in diversion. If you do not participate, your case will go to court if charges are filed by the prosecutor. If your case goes to court, you can have a lawyer to represent you, and you will not have to pay for the lawyer if you cannot afford it. If you are found guilty in court, the maximum penalty cannot be greater than the maximum penalty the diversion unit may impose.

11. I have been informed and fully understand that if the offense for which I have entered into a diversion agreement is a violation of RCW 66.44, 69.41, 69.50, or 69.52, and I was 13 years of age or older when the offense was committed, the diversion agreement will result in the suspension or revocation of my privilege to drive. (If not applicable, this paragraph should be crossed out and initialed by the offender.)

12. I have been informed and fully understand that if I am enrolled in a common school, the court will notify the principal of my diversion agreement if the offense for which I am entering into a diversion agreement is a violent offense as defined in RCW 9.94A.030; a sex offense as defined in RCW 9.84A.030; inhaling toxic fumes under chapter 9.47A RCW; a controlled substance violation under chapter 69.50 RCW; a liquor violation under RCW 66.44.270; or any crime under chapters 9A.36, 9A.40, 9A.46, and 9A.48 RCW. (If not applicable, this paragraph should be crossed out and initialed by the offender.)

13. I have read or someone has read to me everything printed above, and I understand it. I have been given a copy of this statement.

Dated _____ Dated _____

_____ _____

Parent or Guardian (optional) Juvenile

The above statement was read to the juvenile and signed by the juvenile on the date indicated.

_____

Representative of Diversion Unit

If applicable:

I am fluent in the _____ language and I have translated this entire document for the juvenile from English into that language. The juvenile has acknowledged his or her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this _____ day of _____, 19___, at _____, Washington.

_____

Interpreter

(b) Advice When No Confinement Possible. A juvenile alleged to have committed a traffic infraction or an offense for which an adult could not be confined shall be given a copy of a statement in substantially the following form during the initial interview with a diversion unit. The statement shall also be read by, or read to, the juvenile before the juvenile signs the statement.

Advice About Diversion

1. Diversion is a different way of dealing with juveniles who are charged with an offense. You do not go to

court and there is no trial before a judge.

2. A diversion agreement is a contract between you and the diversion unit. If you are alleged to have committed a traffic infraction, a diversion agreement requires you to do community service or attend educational or counseling sessions. If you are alleged to have committed some other offense, a diversion agreement may require you to do certain things, such as community service, attend a counseling, informational, or educational interview, or make restitution, but you cannot be sent to jail. Under certain circumstances you may be counseled and released, which means no further action will be required of you.

3. If you do not follow the diversion agreement, the prosecutor may bring you to a hearing for the offenses with which you are charged. If you do not appear at the court hearing, the court may order that you be arrested.

4. When you are 18 years old, you may ask the court to destroy all records on this offense if your criminal history consists of only one diversion and 2 years have passed since you completed the diversion agreement.

5. You have the right to talk to a lawyer about whether you should participate in diversion or whether you should go to court. You will not have to pay for a lawyer if you cannot afford it. If you do not believe you committed this offense, you should talk to a lawyer.

6. When you agree to participate in the diversion process, you do not have the right to have a free lawyer appointed for you to help you work out a diversion agreement but you do have the right to have a lawyer help you work out a diversion agreement if you can afford to pay for it.

7. You do not have to participate in diversion. If you do not participate, your case will go to court if charges are filed by the prosecutor. If your case goes to court, you can talk to a lawyer but you may have to pay for it. If you are found guilty in court, the maximum penalty cannot be greater than the maximum penalty the diversion unit may impose.

8. If you are charged with a traffic infraction and agree to diversion, the diversion unit may notify the Department of Licensing. This may affect your driving privileges.

9. I have read or someone has read to me everything printed above, and I understand it. I have been given a copy of this statement.

Dated _____ Dated _____

_____ _____

Parent or Guardian (optional) Juvenile

The above statement was read to the juvenile and signed by the juvenile on the date indicated.

_____

Representative of Diversion Unit

If applicable:

I am fluent in the _____ language and I have translated this entire document for the juvenile from English into that language. The juvenile has acknowledged his or her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this _____ day of _____, 19___, at _____, Washington.

_____

Interpreter

In addition to amendments proposed for grammatical purposes, under "Advise when confinement is possible.": #7 and #9 are deleted pursuant to 1997 C338 ' 40, amending RCW 13.050.050; #11 is added pursuant to 1988 C148 ' 2, and #12 is added pursuant to 1997 C266 ' 7, amending RCW 13.04.155. Under "Advise when no confinement possible": #4 and #6 are deleted pursuant to 1997 C338 ' 40, amending RCW 13.050.050.

(Amended September 1, 1999)

RULE 6.5
ADVICE OF RIGHTS AND EFFECT OF DIVERSION

(RESCINDED)

RULE 6.6
TERMINATION OF DIVERSION AGREEMENT

(a) Petition. The procedure to seek termination of a diversion agreement is to file a petition in juvenile court alleging that the juvenile has substantially violated the terms of the diversion agreement. The petition shall include a statement of:

(1) The offense which the juvenile was alleged to have committed;

(2) The terms of the diversion agreement; and

(3) The alleged violation of the diversion agreement.

(b) Preliminary Hearing if Juvenile Is in Detention. A juvenile may not be taken into custody and held in detention solely for an alleged violation of a diversion agreement. RCW 13.40.040 and 13.40.050 are the only authority for taking a juvenile into custody and holding the juvenile in detention. If a juvenile alleged to have violated a diversion agreement is held in detention on some other basis, a preliminary hearing on the petition for termination shall be held within 72 hours after taking the juvenile into custody, excluding Saturdays, Sundays, and holidays. Notice of the hearing shall be given in accordance with rule 11.2. At the hearing the court shall determine whether probable cause exists to believe the allegations in the petition, whether the petition is contested, and, in accordance with rule 7.4, whether continued detention is necessary. If the petition is contested and the juvenile is held in detention, the hearing on the petition shall be held within 14 days of the date of the preliminary hearing. If the petition is uncontested, the court may proceed immediately with the hearing on the petition to terminate the diversion agreement.

(c) Scheduling and Notice of Hearing. The court shall schedule a hearing on the allegations in the petition with reasonable speed, except that when a juvenile is held in detention, the hearing shall be scheduled in accordance with section (b) of this rule. A copy of the petition and written notice of the hearing, containing the date, time, and other information required by RCW 13.40.080(6), shall be given the juvenile in accordance with rule 11.2. The notice shall also state that an information may be filed on the original offense.

(d) Disclosure of Evidence. All evidence to be offered against the juvenile shall be disclosed to the juvenile a reasonable time prior to the hearing.

(e) Procedure at Hearing. The court shall hold a hearing on the allegations made in the petition. At the hearing the juvenile shall have the opportunity to be heard in person, to present evidence, and to confront and cross-examine all adverse witnesses.

(f) Burden of Proof and Order Terminating Diversion Agreement. The petitioner must prove by a preponderance of the evidence that the allegations in the petition are true and that they are a substantial violation of the diversion agreement. If the court finds that the petitioner has met this burden of proof, it may order the termination of the diversion agreement. An order terminating a diversion agreement shall include a written statement of the evidence relied upon by the court and the reasons for the termination.

(g) Consolidation of Termination Hearing With Adjudication of Offense. When the diversion unit has referred the case to the prosecuting attorney, and the prosecutor has filed an information, the court may schedule the hearing on the allegations in the petition to terminate the diversion agreement for the same time and place as the adjudicatory hearing on the allegations in the information. In that case, the court shall hold a hearing in accordance with this rule and make a finding with respect to the allegations in the petition before conducting the adjudicatory hearing on the allegations in the information.

RULE 7.1
INVOKING JUVENILE COURT JURISDICTION

Juvenile court jurisdiction is invoked over a juvenile offense proceeding by filing an information.

RULE 7.2
INFORMATION

(a) Content. (Reserved. See RCW 13.40.070.)
(b) Amendment. An information may be amended at any time. The court shall grant additional time if necessary to insure a full and fair hearing on any new allegations in the amended information.

RULE JuCR 7.3
DETENTION AND RELEASE

(a) Time for First Appearance Generally. A juvenile who has been taken into custody without a warrant and who is to be detained or released on any conditions other than the promise to appear in court at subsequent hearings must receive a judicial determination on the issues of probable cause no later than 48 hours following the juvenile's arrest.

(b) Determination of Probable Cause. The court shall determine probable cause based on an affidavit, a document as provided in RCW 9A.72.085 or any law amendatory thereto, or sworn testimony. The sworn testimony shall be electronically or stenographically recorded. The evidence shall be preserved. The evidence shall be subject to constitutional limitations for probable cause determinations and may be hearsay in whole or in part.

(c) If No Information Filed Before Custody. If a juvenile alleged to have committed a juvenile offense is taken into custody before an information is filed, the court shall make every reasonable effort to conduct a hearing on the issue of detention by the end of the next judicial day. The juvenile shall be released unless an information is filed within 72 hours (excluding Saturdays, Sundays, and holidays) after taking the juvenile into custody. In the absence of any prior determination, a juvenile held in detention after the filing of an information shall be given a hearing to determine whether continued detention is necessary. The juvenile shall be released unless this determination is made within 72 hours (excluding Saturdays, Sundays, and holidays) after the information has been filed.

(d) If Information Filed Before Custody. If a juvenile alleged to have committed a juvenile offense is taken into custody after an information has been filed and is held in detention, the juvenile shall be given a hearing to determine whether continued detention is necessary. The court shall make every reasonable effort to conduct the hearing by the end of the next judicial day. The juvenile shall be released unless this determination is made within 72 hours (excluding Saturdays, Sundays, and holidays) after the juvenile is taken into custody.

(e) If Motion Not Filed Before Custody. If a juvenile alleged to have violated a diversion agreement, a conditional release order, a disposition order, or a deferred adjudication or deferred disposition order is taken into custody and held in detention before a petition to terminate the diversion agreement, a motion to modify the conditional release order or the disposition order, or a motion to revoke the deferred adjudication or deferred disposition order is filed, the court shall make every reasonable effort to conduct a hearing on the issue of detention by the end of the next judicial day. The juvenile shall be released unless a motion is filed within 72 hours (excluding Saturdays, Sundays, and holidays) after taking the juvenile into custody. In the absence of any prior determination, a juvenile held in detention after the filing of a motion shall be given a hearing to determine whether continued detention is necessary. The juvenile shall be released unless t his determination is made within 72 hours (excluding Saturdays, Sundays, and holidays) after the juvenile is taken into custody.

(f) If Petition or Motion Filed Before Custody. If a juvenile alleged to have violated a diversion agreement, a conditional release order, a disposition order, or a deferred adjudication or deferred disposition order is taken into custody and held in detention after a petition to terminate the diversion agreement, a motion to modify the conditional release order or the disposition order, or a motion to revoke the deferred adjudication or deferred disposition order is filed, the juvenile shall be given a hearing within 72 hours (excluding Saturdays, Sundays, and holidays) after taking the juvenile into custody, or the juvenile shall be released.

[Amended effective September 1, 1987; December 16, 1988; September 1, 1993; September 1, 1995; July 29, 1997; September 1, 1997.]

RULE 7.4
DETENTION HEARING

(a) Notice. The notice required by RCW 13.40.050(2) for a detention hearing shall be given in accordance with rule 11.2.

(b) Procedure at Hearing. The detention hearing shall be held in accordance with RCW 13.40.050(3) and (4). All parties shall have an opportunity to present evidence and to be heard on the issue of continued detention.

(c) Determination by Court Generally. At the hearing the court shall determine whether continued detention is necessary under RCW 13.40.040.

(d) Determination That Detention Necessary. If the court finds that continued detention is necessary, the court shall state on the record the specific statutory provision and the facts on which the court based its order for continued detention. The juvenile may nevertheless be released upon posting of a bond and the imposition of conditions upon such release pursuant to RCW 13.40.040(4).

(e) Determination That Detention Not Necessary. If the court at the detention hearing determines that continued detention is not necessary, the juvenile shall be ordered released on personal recognizance. The court may impose conditions on the release pursuant to RCW 13.40.050(6).

RULE 7.5
ISSUANCE OF SUMMONS OR WARRANT

(a) Generally. When an information is filed, the court may direct the clerk to command the juvenile and others to appear at a specified time and place by the issuance of a summons, or the court may direct the clerk to issue a warrant for the arrest of the juvenile, or the court may direct the clerk to notify the juvenile and others by other methods approved by local court rule.

(b) Summons Preferred; Warrant Used Only Upon Showing of Probable Cause. If the information charges only the commission of a misdemeanor or a gross misdemeanor, the court shall direct the clerk to command the presence of the juvenile by the issuance of a summons or other method approved by local court rule instead of a warrant, unless the court finds probable cause to believe that the juvenile would not appear in response to the command or probable cause to believe that the arrest is necessary to prevent serious bodily harm to the juvenile or another, or serious loss of or harm to property, in which case the court may issue a warrant. A warrant of arrest must be supported by an affidavit or sworn testimony, which shall be recorded electronically or stenographically, establishing the grounds for issuing the warrant. The finding of probable cause may be based on evidence that is hearsay in whole or in part.

(c) Requirements of a Summons.

(1) Generally. (Reserved. See RCW 13.40.100.)

(2) Additional Contents of a Summons Directed to Juvenile. A summons directed to a juvenile shall contain the following advisement:

Right to Lawyer

1. You have the right to talk to a lawyer, and if you cannot afford a lawyer, one will be appointed for you.

2. A lawyer can look at the social and legal files in your case, talk to the people involved in the offense proceeding, tell you about the law, help you understand your rights and the possible consequences of being found to be a juvenile offender, prepare any defense that you may have, and present to the court possible sentences should you be found guilty.

(d) Service and Return of Summons.

(1) Service. A summons may be served as provided in RCW 13.40.100, or it may be served by mailing the summons, postage prepaid, to the person named in the summons.

(2) Return. The person to whom a summons has been delivered shall, on or before the return date, file a return thereof with the judge before whom the summons is returnable.

(e) Failure To Appear in Response to Summons. (Reserved. See RCW 13.40.100.)

(f) Requirements of a Warrant. The warrant shall be in writing and in the name of the State of Washington, shall be signed by the clerk with the title of his or her office, and shall state when issued and the county where issued. It shall specify the name of the juvenile, or if his or her name is unknown, any name or description by which the juvenile can be identified with reasonable certainty. The warrant shall specify the offense charged and shall command that the juvenile be arrested and brought forthwith before the court issuing the warrant. The court issuing the warrant shall set forth on the warrant the conditions for release, including bail, pursuant to RCW 13.40.040.

(g) Execution and Return of Warrant.

(1) Execution. The warrant shall be directed to all peace officers in the state or to probation counselors authorized to serve process pursuant to RCW 13.04.040. The warrant shall be executed only by a peace officer or probation counselor.

(2) Return. The officer executing a warrant shall make a return thereof to the court before whom the juvenile is brought pursuant to these rules. At the request of the prosecuting attorney any unexecuted warrant shall be returned to the juvenile court and canceled. For reasonable cause, the court itself may order that the warrant be returned to the court.

(h) Defective Summons or Warrant.

(1) Amendment. No juvenile appearing in response to a summons or arrested under a warrant shall be discharged from custody or dismissed because of any irregularity in the summons or warrant, but the summons or warrant may be amended to remedy any such irregularity.

(2) Issuance of New Summons or Warrant. If, during the preliminary examination of any juvenile appearing in response to the summons or arrested under a warrant, it appears that the warrant or summons does not properly name or describe the juvenile or the offense charged, or that although not guilty of the offense specified in the summons or warrant, there is reasonable ground to believe that the juvenile is guilty of some other offense, the judge shall not discharge or dismiss the juvenile but may allow a new information to be filed and shall thereupon issue a new summons or warrant.

JuCR
RULE 7.6
ARRAIGNMENT AND PLEAS

(a) Time and Procedure for Arraignment. A juvenile who is detained or subject to conditions of release must be arraigned within 14 days after the information or indictment is filed. The procedure for the arraignment of an alleged juvenile offender is governed by CrR 4.1.

(b) Plea. The taking of a plea of an alleged juvenile offender is governed by CrR 4.2.

(c) Advice of Standard Sentence. Before entering a plea, the juvenile should be advised of the standard sentence for the offense charged, and should be advised of the criminal history upon which the standard sentence is based.

(d) Effect of Motion To Decline Jurisdiction. If a decline hearing is requested or required, then the juvenile court has no jurisdiction to accept a plea until a decline hearing is held and an order is entered retaining jurisdiction in the juvenile court. The time limit for the adjudicatory hearing under rule 7.8 does not begin to run until the day after the entry of the order retaining jurisdiction.

(e) Determination of Capacity. When a determination of capacity is required pursuant to RCW 9A.04.050, a hearing to determine the juvenile's capacity shall be held within 14 days from the juvenile's first court appearance, separate from and prior to arraignment. Notice of the hearing to determine capacity and its purpose shall be given in accordance with rule 11.2.

The revision provides clarification with regard to applicability and addresses implementation problems caused by linking the time for the capacity hearing to the filing of the information.

(Amended September 1, 1999)

7.7 STATEMENT OF JUVENILE ON PLEA OF GUILTY (IN WORD FORMAT)

The contents of this item are only available on-line.

RULE JuCR 7.8
TIME FOR ADJUDICATORY HEARING

(a) General Provisions.

(1) Responsibility of Court. It shall be the responsibility of the court to ensure an adjudicatory hearing in accordance with the provisions of this rule to each person charged with a juvenile offense.

(2) Definitions. For purpose of this rule:

(i) "Pending charge" means the charge for which the

allowable time for trial is being computed.

(ii) "Related charge" means a charge based on the same conduct as the pending charge that is ultimately filed in juvenile court.

(iii) "Appearance" means the juvenile's physical presence in the court where the pending charge was filed. Such presence constitutes appearance only if (A) the prosecutor was notified of the presence and (B) the presence is contemporaneously noted on the record under the cause number of the pending charge.

(iv) "Arraignment" means the date determined under JuCR 7.6 and CrR 4.1(b)

(v) "Held in detention" means held in the custody of a detention facility pursuant to the pending charge. Such detention excludes any period in which a juvenile is on electronic home monitoring, is being held on an unrelated charge or hold, or is serving a sentence of confinement.

(3) Construction. The allowable time for the adjudicatory hearing shall be computed in accordance with this rule. If a hearing is timely under the language of this rule but was delayed by circumstances not addressed in this rule or JuCR 7.6, the pending charge shall not be dismissed unless the juvenile's constitutional right to a speedy trial was violated.

(4) Related Charges. The computation of the allowable time for the adjudicatory hearing on a pending charge shall apply equally to all related charges.

(5) Reporting of Dismissals and Untimely Hearings. The court shall report to the administrative Office of the Courts, on a form determined by that office, any case in which

(i) the court dismissed a charge on determination pursuant to section (h) that the charge had not been brought to hearing within the time limit required by this rule, or

(ii) the time limits would have been violated absent the cure period authorized by section (g).

(b) Time for Adjudicatory Hearing.

(1) Juvenile Held in Detention. A juvenile who is held in detention shall be brought to hearing within the longer of

(i) 30 days after the commencement date specified in this rule, or

(ii) the time specified in subsection (b)(5).

(2) Juvenile Not Held in Detention. A juvenile who is not held in detention shall be brought to hearing within the longer of

(i) 60 days after the commencement date specified in this rule, or

(ii) the time specified in subsection (b)(5)

(3) Release of Juvenile. If a juvenile is released from detention before the 30 day time limit has expired, the limit shall be extended to 60 days.

(4) Return to Detention following Release. If a juvenile was not held in detention at the time the hearing date was set but is subsequently returned to detention on the same or related charge, the 60-day limit shall continue to apply. If the juvenile is held in detention when the hearing is reset following a new commencement date, the 30-day limit shall apply.

(5) Allowable Time after Excluded Period. If any period of time is excluded pursuant to section (e), the allowable time for the adjudicatory hearing shall not expire earlier than 15 days after the end of that excluded period.

(c) Commencement date.

(1) Initial Commencement Date. The initial commencement date shall be the date of arraignment as determined under JuCR 7.6 and CrR 4.1

(2) Resetting of Commencement Date. On occurrence of one of the following events, a new commencement date shall be established, and the elapsed time shall be reset to zero. If more than one of these events occurs, the commencement date shall be the latest of the dates specified in this subsection.

(i) Waiver. The filing of a written waiver of the juvenile's rights under this rule signed by the juvenile. The new commencement date shall be the date specified in the waiver, which shall not be earlier than the date on which the waiver was filed. If no date is specified, the commencement date shall be the date of the hearing contemporaneously or subsequently set by the court.

(ii) Failure to Appear. The failure of the juvenile to appear for any proceeding at which the juvenile's appearance was required. The new commencement date shall be the date of the juvenile's next appearance.

(iii) New Adjudicatory Hearing. The entry of an order granting a mistrial or new adjudicatory hearing or allowing the juvenile to withdraw a plea of guilty. The new commencement date shall be the date the order is entered.

(iv) Appellate Review or Stay. The acceptance of review or grant of a stay by an appellate court. The new commencement date shall be the date of the juvenile's appearance that next follows the receipt by the clerk of the juvenile court of the mandate or written order terminating review or stay.

(v) Collateral Proceeding. The entry of an order granting a new adjudicatory hearing pursuant to a person restraint petition, a habeas corpus proceeding, or a motion to vacate judgment. The new commencement date shall be the date of the juvenile's appearance that next follows either the expiration of the time to appeal such order or the receipt by the clerk of the juvenile court of notice of action terminating the collateral proceeding, whichever comes later.

(vi) Change of Venue. The entry of an order granting a change of venue. The new commencement date shall be the date of the order.

(vii) Disqualification of Counsel. The disqualification of the defense attorney or prosecuting attorney. The new commencement date shall be the date of the disqualification.

(d) Setting of Hearing Date---Notice---Objections---Loss of Right to Object.

(1) Initial Setting of Hearing Date. The court shall, within 15 days of the juvenile's actual arraignment in juvenile court, set a date for the adjudicatory hearing which is within the time limits prescribed by this rule and notify counsel for each party of the date set. If a juvenile is not represented by counsel, the notice shall be given to the juvenile and may be mailed to the juvenile's last known address. The notice shall set forth the proper date of the juvenile's arraignment and the date set for the hearing.

(2) Resetting of Hearing Date. When the court determines that the hearing date should be reset for any reason, including but not limited to the applicability of a new commencement date pursuant to subsection (c)(2) or a period of exclusion pursuant to section (e), the court shall set a new date for the hearing which is within the time limits prescribed and notify each party of the date set.

(3) Objection to Hearing Date. A party who objects to the date set upon the ground that it is not within the time limits prescribed by this rule must, within 10 days after the notice is mailed or otherwise given, move that the court set an adjudicatory hearing within those time limits. Such motion shall be promptly noted for hearing by the moving party in accordance with local procedures. A party who fails, for any reason, to make such a motin shall lose the right to object that an adjudicatory hearing commenced on such a date is not within the time limits prescribed by this rule.

(4) Loss of Right to Object. If a hearing date is set outside the time allowed by this rule, but the defendant lost the right to object to that date pursuant to subsection (d)(3), that date shall be treated as the last allowable date for the adjudicatory hearing, subject to section (g). A later hearing date shall be timely only if the commencement date is reset pursuant to subsection (c)(2) or there is a subsequent excluded period pursuant to section (e) and subsection (b)(5).

(e) Excluded Periods. The following periods shall be excluded in computing the time for the adjudicatory hearing:

(1) Competency Proceedings. All proceedings related to the competency of the juvenile to participate in the hearing on the pending charge, beginning on the date when the competency examination is ordered and terminating when the court enters a written order finding the juvenile to be competent.

(2) Proceedings on Unrelated Charges. Arraignment, pre-adjudicatory hearing proceedings, adjudicatory hearing, and disposition hearing on an unrelated charge.

(3) Continuances. Delay granted by the court pursuant to section (f).

(4) Period between Dismissal and Refiling. The time between the dismissal of a charge and the refilling of the same or related charge.

(5) Disposition of Related Charge. The period between the

commencement of an adjudicatory hearing or the entry of a plea of guilty on one charge and the juvenile's arraignment in superior court on a related charge.

(6) Juvenile Subject to foreign or Federal Custody or Conditions. The time during which a juvenile is detained outside the state of Washington or in a federal facility and the time during which a juvenile is subject to conditions of release not imposed by a court of the State of Washington.

(7) Unavoidable or Unforseen Circumstances. Unavoidable or unforeseen circumstances affecting the time for the adjudicatory hearing beyond the control of the court or the parties. This exclusion also applies to the cure period of section (g).

(8) Motion for Revision. When amotion for revision of a court commissioner's ruling is filed, the time between the court commissioner's ruling and an order deciding the motion.

(9) Disqualification of Judge. A five-day period of time commencing with the disqualification of the judge to whom the case is assigned for the adjudicatory hearing.

(f) Continuances. Continuances or other delays may be granted as follows:

(1) Written Agreement. Upon written agreement of the parties, which must be signed by the alleged juvenile offender or all the alleged offenders, the court may continue the hearing date to a specified date.

(2) Motion by the Court or a Party. On motion of the court or a party, the court may continue the hearing to a specified date when such continuance is required in the administration of justice and the juvenile will not be prejudiced in the presentation of his or her defense. The motion must be made before the time for the adjudicatory hearing has expired. The court must state on the record or in writing the reasons for the continuance. The bringing of such motion by or on behalf of any party waives that party's objection to the requested delay.

(g) Cure Period. The court may continue the case beyond the limits specified in section (b) on motion of the court or a party made within five days after the time for the adjudicatory hearing has expired. Such a continuance may be granted only once in the case upon a finding on the record or in writing that the juvenile will not be substantially prejudiced in the presentation of his or her defense. The period of delay shall be for no more than 7 days for a juvenile who is held in detention, or 28 days for a juvenile not held in detention, from the date that the continuance is granted. The court may direct the parties to remain in attendance or be on-call for hearing assignment during the cure period.

(h) Dismissal With Prejudice. A charge not brought to adjudicatory hearing within the time limit determined under this rule shall be dismissed with prejudice. The State shall provide notice of dismissal to the victim and at the court's discretion shall allow the victim to address the court regarding the impact of the crime. No case shall be dismissed for time-to-hearing reasons except as expressly required by this rule, a statute, or the state or federal constitution.

[Amended effective September 1, 1987; July 29, 1997; May 29, 2001; September 1, 2003.]

RULE 7.9
JOINDER OF OFFENSES AND CONSOLIDATION OF ADJUDICATORY HEARINGS

(a) Joinder of Offenses. The joinder of offenses in an information is governed by CrR 4.3(a) and (c), where applicable.

(b) Consolidation of Adjudicatory Hearing. On motion of the prosecutor or the alleged juvenile offender, or on its own motion, the court may, for purposes of conducting the adjudicatory hearing, order that two or more informations naming different juveniles be consolidated and heard at the same time when two or more defendants could be joined in the same charge pursuant to CrR 4.3(b).

RULE 7.10
SEVERANCE OF OFFENSES AND CONSOLIDATED HEARINGS

The severance of offenses and severance of consolidated hearings is governed by CrR 4.4, where applicable.

RULE 7.11
ADJUDICATORY HEARING

(a) Burden of Proof. The court shall hold an adjudicatory hearing on the allegations in the information. The prosecution must prove the allegations in the information beyond a reasonable doubt.

(b) Evidence. The Rules of Evidence shall apply to the hearing, except to the extent modified by RCW 13.40.140(7) and (8). All parties to the hearing shall have the rights enumerated in RCW 13.40.140(7).

(c) Decision on the Record. The juvenile shall be found guilty or not guilty. The court shall state its findings of fact and enter its decision on the record. The findings shall include the evidence relied upon by the court in reaching its decision.

(d) Written Findings and Conclusions on Appeal. The court shall enter written findings and conclusions in a case that is appealed. The findings shall state the ultimate facts as to each element of the crime and the evidence upon which the court relied in reaching its decision. The findings and conclusions may be entered after the notice of appeal is filed. The prosecution must submit such findings and conclusions within 21 days after receiving the juvenile's notice of appeal.

JuCR
RULE 7.12
DISPOSITION HEARING

(a) Time. A disposition hearing shall be held if the juvenile has pleaded guilty or has been found guilty by the court. The hearing may be held immediately following the juvenile's plea of guilty or immediately following the adjudicatory hearing if found guilty by the court. The disposition hearing may be continued for a period of up to 14 days after the plea or the conclusion of the hearing if the juvenile is held in detention, or 21 days after the plea or the conclusion of the hearing if the juvenile is not held in detention. Either time may be extended by the court for good cause shown. Notice of a continued hearing shall be given to all parties in accordance with rule 11.2.

(b) Conduct of Hearing. The court shall conduct the hearing in accordance with RCW 13.40.150. At the conclusion of the disposition hearing, the court shall, in accordance with CrR 7.2(b), advise the juvenile of the right to appeal, including when applicable the right to appeal a sentence based upon a finding of manifest injustice.

(c) Criminal History--Definition. In determining the standard range of disposition for a juvenile, the juvenile's criminal history includes any criminal complaint alleging an offense and resulting in one of the following prior to the commission of the current offense:

(1) A finding made prior to July 1, 1978, that the juvenile committed an offense, if the allegation was required to be proven beyond a reasonable doubt or if the juvenile admitted the allegation; or

(2) A conviction or a plea of guilty on or after July 1, 1978; or

(3) Violations, as defined by RCW 13.40.020, committed on or after July 1, 1998.

(d) Criminal History--Multiple Charges. If the juvenile has been convicted of two or more charges arising out of the same course of conduct, then only the highest charge is counted as criminal history. If the juvenile has been convicted of two or more charges that did not arise out of the same course of conduct, then all of the charges count as criminal history, even though the charges may have consolidated into a single disposition order.

(e) Disposition Based Upon Finding of Manifest Injustice. If the court imposes a sentence based upon a finding of manifest injustice, the disposition order shall set forth those portions of the record material to the disposition.

(f) Disposition Requiring Detention in a State-Operated Juvenile Detention Facility. If the court imposes a sentence requiring commitment to the Division of Juvenile Rehabilitation of the Department of Social and Health Services for detention, the copy of the disposition order sent to the Division shall be accompanied by a statement of the criminal history relied upon by the sentencing court.

(g) Judgment and Sentence. For every disposition order entered pursuant to a juvenile court offense adjudication or deferred

adjudication, the court entering the order shall forward to the Sentencing Guidelines Commission the information contained in the order and such criminal history, demographic, and other information as the Office of the Administrator for the Courts may prescribe. The Administrator for the Courts, at the direction of the Supreme Court, and after consulting with the Sentencing Guidelines Commission, shall determine the method for transmitting this information from the court to the Commission.

(Amended July 11, 1996)
Pursuant to 1997 C338 ' 12 amending RCW 13.40.0357.
(Amended September 1, 1999)

JuCR
RULE 7.13
RELEASE PENDING APPELLATE REVIEW

Pending appellate review of an order of adjudication or disposition, the court may impose conditions on release as provided in RCW 13.40.040(4) and 13.40.050(6).

Pursuant to 1997 C338 ' 35 amending RCW 13.40.230(5).

(Amended September 1, 1999)

RULE 7.14
MODIFICATION OF DISPOSITION ORDER

(a) Generally. The procedure for seeking a modification of a disposition order is to file a motion in juvenile court. A disposition order may only be modified in accordance with RCW 13.40.190 and 13.40.200.
(b) Who May File Motion. Any party may file a motion seeking modification of a disposition order. The court may, on its own motion, seek modification of a disposition order.
(c) Contents of Motion. The motion shall state the reason for seeking modification and the nature of the modification sought.
(d) Preliminary Hearing if Juvenile Is in Detention. If a juvenile alleged to have violated the terms of a disposition order is held in detention, a preliminary hearing shall be held in accordance with rule 7.3(c) or (d). Notice of the hearing shall be given in accordance with rule 11.2. At the hearing the court shall determine whether probable cause exists to believe the allegations in the motion, whether the petition is contested, and, in accordance with rule 7.4, whether continued detention is necessary. If the motion is contested and the allegation is not a juvenile offense and the juvenile is held in detention, the hearing on the motion shall be held within 7 days of the date of the preliminary hearing. If the motion is contested, and the allegation is a juvenile offense, and the juvenile is in detention, the hearing on the motion shall be held within 14 days of the date of the preliminary hearing. If the motion is uncontested, the court may proceed immediately with the hearing on the motion.
(e) Scheduling and Notice of Hearing. The court shall schedule a hearing on the allegations in the motion with reasonable speed, except that when the juvenile is held in detention, the hearing shall be scheduled in accordance with section (d) of this rule. Notice of the hearing may be given in accordance with rule 11.2, or the court may issue a summons or a warrant pursuant to rule 7.5.

7.15 WAIVER OF RIGHT TO COUNSEL (IN WORD FORMAT)

The contents of this item are only available on-line.

RULE 8.1
TIME FOR DECLINE HEARING

(a) Initiating Decline Hearing. If required or requested pursuant to RCW 13.40.110, a decline hearing shall be scheduled and held separate from and prior to the adjudicatory hearing.
(b) Time for Hearing in Felony Cases. In any case where declining jurisdiction would allow criminal prosecution for a felony, the decline hearing shall be held within 14 days after the information is filed unless the time is extended by the court for good cause.
(c) Notice. Notice of the decline hearing and its purpose shall be

given in accordance with rule 11.2.

RULE 8.2
PROCEDURE AT DECLINE HEARING

The decline hearing shall be conducted in accordance with RCW 13.40.110(2). Any report or study to be presented to the court must be made available to the opposing party for a reasonable period prior to the hearing or reasonable time must be accorded the opposing party to respond.

RULE 9.1
CHILD IN NEED OF SERVICES AND AT RISK YOUTH PETITION - MANDATORYAPPOINTMENT OF LAWYER

The court shall appoint a lawyer for a child in Child In Need of Services or an At Risk Youth proceeding proceeding when required by RCW 13.32A.160(1)(e)(a)(ii)(c) and RCW 13.32A.190(1), or 13.32A.192(1)(c).

RULE 9.2
ADDITIONAL RIGHT TO REPRESENTATION BY LAWYER

(a) Retained Lawyer. Any party may be represented by a retained lawyer in any proceedings before the juvenile court.
(b) Child in Need of Services Proceedings. The court shall appoint a lawyer for indigent parents of a juvenile in a child in need of services proceeding.
(c) Dependency and Termination Proceedings. The court shall provide a lawyer at public expense in a dependency or termination proceeding as follows:
(1) Upon request of a party or on the court's own initiative, the court shall appoint a lawyer for a juvenile who has no guardian ad litem and who is financially unable to obtain a lawyer without causing substantial hardship to himself or herself or the juvenile's family. The ability to pay part of the cost of a lawyer shall not preclude assignment. A juvenile shall not be deprived of a lawyer because a parent, guardian, or custodian refuses to pay for a lawyer for the juvenile. If the court has appointed a guardian ad litem for the juvenile, the court may, but need not, appoint a lawyer for the juvenile.
(2) Upon request of the parent or parents, the court shall appoint a lawyer for a parent who is unable to obtain a lawyer without causing substantial hardship to himself or herself or the juvenile's family. The ability to pay part of the cost of a lawyer shall not preclude assignment.
(d) Juvenile Offense Proceedings. The court shall provide a lawyer at public expense in a juvenile offense proceeding when required by RCW 13.40.080(10), RCW 13.40.140(2), or rule 6.2.

RULE 9.3
RIGHT TO APPOINTMENT OF EXPERTS IN JUVENILE OFFENSE PROCEEDINGS

(a) Appointment. A juvenile who is financially unable to obtain investigative, expert, or other services necessary to an adequate defense may request that these services be provided at public expense by a motion. Upon finding that the services are necessary and that the juvenile is financially unable to obtain them without substantial hardship to himself or herself or the juvenile's family, the court shall authorize counsel to obtain the services on the behalf of the juvenile. The ability to pay part of the cost of the services shall not preclude the provision of those services by the court. A juvenile shall not be deprived of necessary services because a parent, guardian, or custodian refuses to pay for those services. The court, in the interest of justice and on a finding that

timely procurement of necessary services could not await prior authorization, may ratify services after they have been obtained.

(b) Compensation. The court shall determine reasonable compensation for the services and direct payment to the organization or person who rendered them on the filing of a claim for compensation supported by affidavits specifying the time expended and the services, and expenses incurred on behalf of the juvenile, and the compensation received in the same case or for the same services from the juvenile or any other source.

RULE 10.1
SCOPE OF TITLE 10

Rule 10.2 relates to recording of juvenile court proceedings. Rule 10.3 relates to records as defined in RCW 13.50.010.

RULE 10.2
RECORDING JUVENILE COURT PROCEEDINGS

(a) Proceedings Other Than Juvenile Offense Proceedings. All juvenile court proceedings which do not involve a juvenile offense shall be recorded by any means which accurately records the proceedings in accordance with RCW 2.32.200.

(b) Juvenile Offense Proceedings. All juvenile court proceedings involving a juvenile offense shall be recorded verbatim by means which will provide an accurate record and which can be subsequently reduced to written form.

RULE 10.3
ACCESS OF PARENT TO RECORDS

(Rescinded. See RCW 13.50.010 through .250.)

RULE 10.4
MOTIONS CONCERNING JUVENILE RECORDS

(Rescinded. See RCW 13.50.010 through .250.)

RULE 10.5
ACCESS TO OFFICIAL JUVENILE COURT FILES

(Reserved. See RCW 13.50.010 through .250.)

RULE 10.6
CHALLENGING JUVENILE COURT RECORDS

(Reserved. See RCW 13.50.010 through .250.)

RULE 10.7
SEALING JUVENILE COURT RECORDS

(Reserved. See RCW 13.50.010 through .250.)

RULE 10.8
DESTRUCTION OF JUVENILE COURT RECORDS

(Reserved. See RCW 13.50.010 through .250.)

RULE 10.9
ONLY COMPLETE INFORMATION RELEASED

(Reserved. See RCW 13.50.010 through .250.)

RULE 11.1
COMPUTING TIME

Time shall be computed in accordance with CR 6 unless otherwise provided by law or these rules.

RULE 11.2
NOTICE OF PROCEEDING

(a) Applicability. This rule applies whenever another Juvenile Court Rule states that notice shall be given in accordance with this rule.
(b) Content of the Notice. The notice shall specify the time, place, and purpose of the proceeding.
(c) Method of Giving Notice. Notice may be given by any means reasonably certain of notifying the party, including, but not limited to, notice in open court, mail, personal service, telephone, and telegraph.

Rule 11.3
Notice to Foster Parents, Preadoptive Parents, Nonrelative Caregivers, or Relative Caregivers

(a) Applicability. This rule applies to all proceedings under Chapter 13.34 RCW to be held with respect to a child in foster care under the responsibility of the Washington State Department of Social and Health Services Children's Administration ("the Department"). The Department is responsible for giving notice of such proceedings to the foster parents, preadoptive parents, nonrelative caregivers or relative caregivers who are providing care to the child at the time of the proceeding.

(b) Content of the Notice. The notice shall specify the time, place, and purpose of the proceeding, and shall inform the foster parents, preadoptive parents, nonrelative caregivers or relative caregivers of their right to be heard in such proceedings.

(c) Method of Giving Notice. Notice may be given by any means reasonably certain of notifying the foster parents, preadoptive parents, nonrelative caregivers or relative caregivers, including but not limited to, notice in open court, mail, personal service, telephone, telegraph and email.

(d) Time of Notice. Notice shall be provided at least five court days before such proceedings; in cases where the foster child is placed with the foster parents, preadoptive parents, nonrelative caregivers or relative caregiver less than five court days before the proceeding, the Department

shall provide notice as soon as practicable before the proceeding.

(e) Verification of Notice. The Department shall provide the Court with written verification of to whom, where, when, and how notice of the proceeding was provided to the foster parents, preadoptive parents, nonrelative caregivers or relative caregivers.

(f) Party Status Not Conferred. This rule does not confer party status upon any foster parent, preadoptive parent, nonrelative caregivers or relative caregiver solely on the basis of such notice and right to be heard at a proceeding.

RULE 11.21
TITLE AND CITATION OF RULES

These rules are called the Juvenile Court Rules and may be cited as JuCR.

RULE 11.22
RULES SUPERSEDED

Except as provided in rule 1.5, the Juvenile Court Rules originally effective January 10, 1969, are superseded by these rules.

RULES 11.4 through 11.20

(RESERVED)
